

Exhibit 2

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Case No. 4:23-CV-00193-D

RODNEY D. PIERCE and MOSES)
MATTHEWS)
)
Plaintiffs,)
)
vs.)
)
THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS, et al.,)
)
Defendants.)

The videoconference deposition of SEAN TRENDE, PH.D. taken pursuant to notice before Vincent J. Bailey, Certified Shorthand Reporter, on September 30, 2024, at the hour of 1:25 p.m.

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DEPONENT: SEAN TRENDE, PH.D.			
Examination by Ms. Theodore			
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19 appeared on behalf of defendants.
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1 SEAN TRENDE, PH.D.,
2 the deponent herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:
5 EXAMINATION
6 BY MS. THEODORE:
7 Q. All right. Good morning, Dr. Trende. My name
8 is Elisabeth Theodore from the law firm of Arnold &
9 Porter.
10 Can you please state your full name for
11 the record?
12 A. Yeah. It is Sean Patrick Trende, T-r-e-n-d-e.
13 The first name is S-e-a-n.
14 Q. All right. You have been deposed a number of
15 times before. Is that right?
16 A. Yes.
17 Q. Including as a Zoom deposition?
18 A. Yes.
19 Q. All right. There will be a transcript of
20 everything we say, so we should try not to talk over
21 each other, and I'll just ask that you wait until my
22 questions are done before answering. Is that fair?
23 A. I'll do my best, yes.
24 Q. Okay. You understand that if your counsel
25 objects, you still have to answer the question unless

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<p>1 your counsel specifically instructs you not to answer 2 the question?</p> <p>3 A. Yes.</p> <p>4 Q. All right. Is there any reason you couldn't 5 give complete, accurate, truthful testimony today?</p> <p>6 A. No.</p> <p>7 Q. All right. If you want to break, just let me 8 know, but I just ask that you not ask to take any 9 breaks in the middle of a question. Is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What did you do to prepare for this 12 deposition?</p> <p>13 A. I spoke with counsel. I reviewed my report and 14 the reports of, or the rebuttal reports of 15 Dr. Collingwood and Mr. Esselstyn.</p> <p>16 Q. Okay. Did you review the opening report of 17 Mr. Esselstyn as well?</p> <p>18 A. No.</p> <p>19 Q. Okay. Did you review Dr. Collingwood's opening 20 report?</p> <p>21 A. No. I've never read that.</p> <p>22 Q. Okay. Did you review any of Dr. Mattingly's 23 reports in preparation of this deposition?</p> <p>24 A. No.</p> <p>25 Q. Okay. Did you review any other documents in</p>	<p>1 A. That's correct.</p> <p>2 Q. Where in North Carolina did you live then?</p> <p>3 A. Durham.</p> <p>4 Q. Okay. Did you ever, have you ever lived in 5 North Carolina other than during the period of time 6 when you were getting a law degree at Duke?</p> <p>7 A. No.</p> <p>8 Q. Okay. Have you ever lived anywhere else in 9 North Carolina besides Durham?</p> <p>10 A. No.</p> <p>11 Q. Have you ever been to any of the counties that 12 are included in any of the demonstration districts 13 Mr. Esselstyn drew in this case?</p> <p>14 A. I have to look at them to be sure, but, yeah, I 15 think so.</p> <p>16 Q. All right. Which of those counties have you 17 been to?</p> <p>18 A. Certainly Dare.</p> <p>19 Q. Dare County?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. It is your understanding that Dare 22 County is part of the demonstration districts 23 Mr. Esselstyn drew in this case?</p> <p>24 A. Yes. I mean, I guess you can define 25 demonstration districts and maybe the answer is no,</p>
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<p>1 preparation for this deposition?</p> <p>2 A. Not that I remember.</p> <p>3 Q. Okay. Did you speak with anyone besides your 4 lawyers in preparation for this deposition?</p> <p>5 A. My wife.</p> <p>6 Q. Okay. Did you bring any documents or notes 7 with you to the deposition?</p> <p>8 A. No. I may have a hard copy of my report and 9 the two rebuttal reports later, but I don't have any 10 documents with me.</p> <p>11 Q. Okay. Do you have anything on your computer 12 screen besides the Zoom window?</p> <p>13 A. No.</p> <p>14 Q. All right. You currently live in Ohio. Is 15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. How long have you lived there?</p> <p>18 A. Since 2011.</p> <p>19 Q. Okay. Have you lived in North Carolina 20 previously?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. 1998 to 2001.</p> <p>24 Q. That's while you were getting a law degree at 25 Duke?</p>	<p>1 but it's part of the area where he was drawing.</p> <p>2 Q. All right. Have you been to Vance County?</p> <p>3 A. Probably. But I'd have to look at the map to 4 be sure.</p> <p>5 Q. Okay. Have you been to Henderson?</p> <p>6 A. I'd have to look at the map.</p> <p>7 Q. So sitting here right now, you don't know if 8 you've been to Henderson?</p> <p>9 A. No.</p> <p>10 Q. Do you know where Henderson is?</p> <p>11 A. Not exactly off the top of my head, no.</p> <p>12 Q. Is it a county or a city?</p> <p>13 MR. STRACH: Objection.</p> <p>14 A. I think the answer is a city. It might be 15 both. I'd have to look at a map.</p> <p>16 Q. Okay. Do you know what county it is in?</p> <p>17 A. No.</p> <p>18 Q. Okay. Have you ever been to Edgecombe or Pitt 19 County?</p> <p>20 A. I'd have to look at a street map.</p> <p>21 Q. You'd have to look at a street map? Why is 22 that?</p> <p>23 A. Well, because the street map would tell me 24 where the roads to the Outer Banks go, which would 25 tell me whether I've been to Edgecombe or Pitt County.</p>
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2 (Pages 5 to 8)

1 Q. Got it. Have you ever been to Edgecombe or
 2 Pitt County other than driving through to go to the
 3 Outer Banks?
 4 A. I don't know.
 5 Q. All right. Do you understand what I mean when
 6 I refer to the black belt counties?
 7 A. Yes.
 8 Q. All right. Other than driving through to go
 9 somewhere else in North Carolina, have you ever been
 10 to the black belt counties?
 11 A. I don't know.
 12 Q. All right. When were you first approached
 13 about serving as an expert in this litigation?
 14 A. Some time before the preliminary injunction
 15 reports were filed.
 16 Q. All right. Actually, let me ask you one more
 17 question. Have you ever been to Elizabeth City?
 18 A. I don't remember.
 19 Q. Okay. Do you know what county Elizabeth City
 20 is in?
 21 A. I believe it's in Pasquotank, but I'm not sure.
 22 Q. All right. Do you recall you submitted a
 23 report at the preliminary injunction stage of this
 24 case in December of 2023?
 25 A. Yes.

1 A. Yes.
 2 Q. All right. Do you recall receiving the reports
 3 from Mr. Esselstyn and Dr. Mattingly around May 31,
 4 2024?
 5 A. That sounds reasonable. I don't remember when
 6 I got them.
 7 Q. Okay. When did you begin working on your
 8 August report in this case?
 9 A. I probably did some of it around the time I got
 10 it. We were out of the country for most of June, but
 11 I believe I wanted to at least familiarize myself with
 12 them before we left. But I think most of the work was
 13 done in July.
 14 Q. Okay. Do you recall approximately how many
 15 hours you spent preparing the August report?
 16 A. No.
 17 Q. Was it less than 50?
 18 A. I don't know.
 19 Q. All right. Did anyone other than counsel help
 20 you in any way with your work on the August expert
 21 report in this case?
 22 A. No.
 23 Q. Okay. Did anyone other than counsel help you
 24 in any way with your work on the preliminary
 25 injunction stage expert report in this case?

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1 Q. Do you recall how many hours you spent
 2 preparing the preliminary injunction stage report?
 3 A. No.
 4 Q. Do you have a guess?
 5 A. No.
 6 Q. All right. You submitted a report on
 7 August 16, 2024?
 8 A. That's right.
 9 Q. All right. I'm going to transmit that and mark
 10 it as Exhibit 1.
 11 (Deposition Exhibit No. 1 marked for
 12 identification.)
 13 BY MS. THEODORE:
 14 Q. Do you recognize this document as the expert
 15 report you submitted in this case in August 2024?
 16 A. I have to open it, okay.
 17 Technical assistance, please.
 18 (Discussion off the record.)
 19 THE WITNESS: All right.
 20 Yes. This is the expert report from this
 21 matter.
 22 BY MS. THEODORE:
 23 Q. Okay. Was your assignment for this August 2024
 24 report to respond to the reports of plaintiffs'
 25 experts Mr. Esselstyn and Dr. Mattingly?

1 A. No.
 2 Q. All right. We talked earlier about what you
 3 did in preparation for this deposition. In general
 4 have you reviewed the reports of plaintiffs' expert
 5 Dr. Burch in this case?
 6 A. Not to prepare for this deposition, but I think
 7 I might have read it at the PI phase.
 8 Q. Okay. Do you recall whether you have read her
 9 reports at the subsequent phase of the case?
 10 A. I don't believe so. I guess I recall, but I
 11 don't believe I've read them.
 12 Q. Okay. You are not expressing any opinion about
 13 Dr. Burch's work in this case. Is that correct?
 14 A. I don't know if there's anything that I wrote
 15 that might indirectly touch on her work, but I
 16 certainly didn't write it directly in response to her.
 17 Q. Can you think of anything right now that might
 18 indirectly touch on her work?
 19 A. I don't see how I could possibly do that, not
 20 having read her reports, but no.
 21 Q. Have you reviewed all of Dr. Collingwood's
 22 rebuttal report or just parts?
 23 A. I believe I read the whole thing. I think I
 24 spent less time on the performance part than what we
 25 might call the ACS part, but I did look at it.

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3 (Pages 9 to 12)

<p>1 Q. Okay. Did you review Dr. Mattingly's rebuttal 2 report? 3 A. Yes. 4 Q. All right. Have you ever read 5 Dr. Collingwood's opening report? 6 A. No. 7 Q. Okay. Did you review any of Dr. Collingwood's 8 data or code that he used for any of his reports? 9 A. No. 10 Q. You could have done that, right? 11 A. If those documents were produced to counsel, I 12 guess I could have. 13 Q. Okay. You never asked for those, for those 14 documents? 15 A. No. 16 Q. Okay. Other than reviewing the rebuttal 17 reports in this case, have you done any other further 18 work or analysis in this case since receiving the 19 rebuttal reports? 20 A. I mean, other than reviewing the rebuttal 21 reports and evaluating their claims, no. 22 Q. Okay. To evaluate their claims, you didn't do 23 any, perform any additional analysis? 24 A. I mean, if you are evaluating claims you are 25 analyzing them and thinking about them, so I guess in</p>	<p>1 Are there any, for example, are there any expert 2 engagements that aren't listed here? 3 A. I think the only thing I'm required to disclose 4 is where I've testified or been deposed, if I recall 5 correctly. So the last case here is Stone v. Allen. 6 I was deposed in Milligan v. Allen as well. 7 Q. All right. Have you served an expert report in 8 any case that is not listed on this list? 9 A. Yes. 10 Q. What are those cases? 11 A. There is the, what I call the big case in North 12 Carolina. I can't think of the name of it right now, 13 but it is the consolidated case regarding 14 Congressional districts, Senate districts and House 15 districts. 16 Q. Okay. 17 A. Then there have been a number of reports in 18 Nassau County, New York, and two reports in Onondaga 19 County, New York. 20 Q. Okay. When were the Nassau County reports 21 served? 22 A. June and July. 23 Q. What about Onondaga County? 24 A. That I believe was all done in September. 25 Q. What are those cases about?</p>
<p>13</p> <p>1 that sense the answer is I did. But in the sense that 2 I think you are using that term, I guess the answer is 3 no. 4 Q. You didn't create any new maps? 5 A. I did not. 6 Q. Okay. You didn't perform any additional data 7 crunching? 8 A. I don't believe I did. 9 Q. You didn't write any additional code? 10 A. I don't think so. 11 Q. All right. 12 A. I assume we are going to spend some quality 13 time with these reports, and if I remember having done 14 something with code I'll let you know. But as I sit 15 here, I don't remember anything. 16 Q. All right. Let's scroll to page 48 of what I 17 marked as Exhibit 1, which is your expert report from 18 August. 19 A. (Witness complies.) 20 Q. Do you see your CV there? 21 A. Yes. 22 Q. Okay. Is this a current accurate copy of your 23 CV? 24 A. I believe so, yes. 25 Q. Are there any updates that you need to make?</p>	<p>15</p> <p>1 A. Political gerrymandering at the county 2 legislative level. 3 Q. Okay. They don't include any VRA analysis? 4 A. No. There are VRA claims in Nassau County. I 5 don't know if there's VRA claim in Onondaga or if it 6 is state VRA, John Lewis Voting Rights Act. 7 Q. Okay. Did you analyze VRA issues in those 8 cases? 9 A. There's some engagement in the rebuttal reports 10 with the VRA claims. 11 Q. What was the nature of that engagement? 12 A. I believe it had to do with performance, 13 whether districts performed. There was some 14 ecological inference analysis. Most of the dispute 15 there is which elections are most appropriate for 16 evaluating performance in a county legislative 17 district. So I ran ecological inference on some years 18 that plaintiff's expert did not include. 19 Q. Okay. All right. So other than the other 20 North Carolina case and the Nassau County and Onondaga 21 cases, there aren't any other cases in which you have 22 served as an expert that are not listed in the CV that 23 we have been discussing? 24 A. I don't think that's right. I think I also 25 said Allen v. Milligan.</p>

<p>1 Q. Okay. Other than North Carolina case, Allen 2 versus Milligan, Nassau County and Onondaga, are there 3 any other cases in which you have served as an expert 4 that are not listed on the CV?</p> <p>5 A. Yes. There is also a report in Florida.</p> <p>6 Q. What was that?</p> <p>7 A. Regarding their state -- it is Hodges. It is a 8 14th amendment claim.</p> <p>9 Q. Have you served a report in that case already?</p> <p>10 A. Yes.</p> <p>11 Q. What was the nature of your assignment in 12 Hodges?</p> <p>13 A. It was evaluating demonstration districts or 14 illustrative districts.</p> <p>15 Q. All right. You are currently employed at 16 RealClear Politics. Is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. All right. Let's flip to page 1 of your 19 report?</p> <p>20 A. (Witness complies.)</p> <p>21 Q. You say there that you collaborate in rating 22 the competitiveness of presidential, senate, house and 23 gubernatorial races. Is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. I assume senate and house in that sentence</p>	<p>1 Carolina in 2020 -- sorry, strike that.</p> <p>2 Other than reporting on CVAP in North 3 Carolina using data from the Census Bureau in 2020 and 4 2022, does your expert report include any analysis of 5 demographic trends in this country?</p> <p>6 A. Not that I can remember.</p> <p>7 Q. Okay. Does your expert report in this case 8 include any analysis of exit poll data?</p> <p>9 A. No.</p> <p>10 Q. Does your expert report in this case include 11 any analysis of public opinion polling?</p> <p>12 A. No.</p> <p>13 Q. Does your expert report in this case include 14 any analysis of voter turnout?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Does your expert report in this case include 17 any analysis of voting behavior?</p> <p>18 A. No.</p> <p>19 Q. All right. Have you ever published anything 20 that relates to North Carolina?</p> <p>21 A. What do you mean by published?</p> <p>22 Q. Well, how do you understand the term published?</p> <p>23 A. Well, from the point of view of academia, that 24 usually means publishing in a peer reviewed journal.</p> <p>25 From the point of view of, say, my</p>
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<p>1 refer to the U.S. Senate and U.S. House?</p> <p>2 A. That's right.</p> <p>3 Q. Does your job at RealClear Politics involve any 4 analysis of state senate races?</p> <p>5 A. Not typically.</p> <p>6 Q. State house races?</p> <p>7 A. Not typically.</p> <p>8 Q. Have you ever analyzed any North Carolina state 9 senate races for your job at RealClear Politics?</p> <p>10 A. Not that I can remember.</p> <p>11 Q. Okay. You say that in carrying out your 12 responsibilities at RealClear Politics, "I have 13 studied and written extensively about demographic 14 trends in the country, exit poll data at the state and 15 federal, public opinion polling, voter turnout and 16 voting behavior."</p> <p>17 Did I read that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Your expert report in this case does not 20 include any analysis of demographic trends in this 21 country. Is that correct?</p> <p>22 A. I don't know about that. We are looking at the 23 trends in CVAP in northeastern North Carolina. So I 24 don't know that I would completely disclaim that.</p> <p>25 Q. Okay. So other than reporting on CVAP in North</p>	<p>1 RealClear Politics job, it will mean writing stuff for 2 RealClear Politics or for AI or any other number of 3 places.</p> <p>4 Q. All right. Have you ever written any articles 5 in any context relating specifically to North 6 Carolina?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. What is the topic of those articles?</p> <p>9 A. I did the North Carolina chapters for the 10 Almanac of American Politics in 2014.</p> <p>11 Q. Okay.</p> <p>12 A. Analysis of North Carolina was included in my 13 book. And I'm sure I've analyzed senate races and 14 congressional races in North Carolina over the course 15 of the past decade and a half.</p> <p>16 Q. You are referring to the United States Senate 17 races?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. What did you talk about in your book 20 with respect to North Carolina?</p> <p>21 A. Well, the book is over 200 page book, so I 22 don't remember every citation or usage there, but it 23 was talking about the development of political trends 24 across the country, and North Carolina was part of 25 that.</p>
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5 (Pages 17 to 20)

1 Q. Does the book cover -- when was the book
 2 published?
 3 A. I believe it was published in 2012.
 4 Q. So it doesn't cover any trend in North Carolina
 5 over the last decade. Is that right?
 6 A. That's right.
 7 Q. Okay. So your dissertation was entitled
 8 "Application of Spatial Analysis to Contemporary
 9 Problems in Political Science." Is that right?
 10 A. I think that's right.
 11 Q. Was that published in any peer-reviewed
 12 journal?
 13 A. No.
 14 Q. Did you ever try to get the dissertation
 15 published?
 16 A. Oh, no.
 17 Q. Okay. So on page 2 of your report you describe
 18 three chapters in the dissertation, and the second
 19 chapter you describe as involving the "application of
 20 integrated nested Laplace approximations to enable the
 21 incorporation of spatial statistical analysis in the
 22 study of U.S. elections." Is that right?
 23 A. Yes.
 24 Q. Can you explain what that means?
 25 A. Yes. So traditionally in the study of

1 Q. What traditional effects disappeared?
 2 A. So there's a long-standing body of research on
 3 ballot order effect, finding whoever is listed first
 4 on the ballot tends to get a bonus, if you will, on
 5 their vote share, but when you run it on -- when you
 6 run it in a spatial model, at least in Arizona, that
 7 effect disappears.
 8 Q. Okay. Did your dissertation discuss North
 9 Carolina at all?
 10 A. I don't believe so. If it did, it was in
 11 passing.
 12 Q. Have you ever published any peer reviewed
 13 academic work?
 14 A. Yes.
 15 Q. What work have you published that's peer
 16 reviewed?
 17 A. It is listed on my CV. Let me pull that up.
 18 It's the joint article from 2022,
 19 "Reconsidering Bellwether Locations in U.S.
 20 Presidential Elections."
 21 Q. I see. Okay. Does that article discuss the
 22 Voting Rights Act?
 23 A. If it does, it is only in passing.
 24 I don't remember any instances of it.
 25 Q. Okay. So to your knowledge, you have never

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1 elections you have had aerial units like precincts or
 2 counties, even states, that have been the basis of the
 3 analysis and people will run their regression analyses
 4 with these units as, you know, the for lack of better
 5 word the cluster of the relevant data. When you do
 6 that, you treat the units as if they were independent
 7 of each other.
 8 Well, that's a big assumption, because we
 9 know that precincts and counties and even states
 10 aren't truly independent of each other. Knowing one
 11 thing about one county or one precinct will typically
 12 give you analysis or give you insight into what the
 13 relevant values are for adjacent or nearby precincts.
 14 And so one of the reasons that this hasn't
 15 been taken into account is that running, writing the
 16 code to take account of this statistical
 17 interdependence in JADS, which is the traditional
 18 Bayesian programming language is cumbersome, can take
 19 a long time.
 20 So there is a newer approach, which rather
 21 than restating it, I'll just call by its acronym INLA,
 22 that does it quickly. So it explored the application
 23 of INLA to the study of elections and with a couple of
 24 case studies noted that when you did so some of the
 25 traditional effects that have been found disappear.

1 published any academic work about the Voting Rights
 2 Act?
 3 A. Not -- to my knowledge, that's correct.
 4 Q. Okay. Have you ever published any academic
 5 work about the use of citizen voting age population
 6 data?
 7 A. I don't believe so.
 8 Q. Have you ever published any academic work about
 9 minority politics for voting behavior?
 10 A. I don't believe so.
 11 By the way, for the record, I have a hard
 12 copy of my report in front of me now.
 13 Q. Okay. Great.
 14 Do you consider yourself to be an expert
 15 on minority politics or minority voting behavior?
 16 A. That's one of those questions that brings in a
 17 legal angle to it. And to the extent that the legal
 18 test is, you know, higher -- for an expert
 19 qualification is, you know, basically greater than a
 20 lay witness, then I suppose that's true.
 21 But to the extent that there's a
 22 subdiscipline of political science that's race and
 23 ethnicity studies, then, no, I wouldn't be in that sense.
 24 I guess the way to answer that is that
 25 I'll interpose my own objection to the extent it calls

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6 (Pages 21 to 24)

<p>1 for a legal conclusion, but to the extent you are 2 asking about something in terms of political science 3 discipline, the answer would be no.</p> <p>4 Q. Have minority politics or voting behaviors been 5 the subject of any of your academic work?</p> <p>6 A. I think it was related to the communities of 7 interest article in my dissertation when we were 8 looking at different ways to define communities of 9 interest -- I guess that's not published so, no. In 10 peer reviewed, literature, no.</p> <p>11 Q. What fields of expertise do you believe you 12 have that are germane to the topics addressed in your 13 report in this case?</p> <p>14 A. Well, I have considerable experience testifying 15 on the Voting Rights Act. I teach it in my class. I 16 teach minority politics and voting behavior in my 17 class. I write about it extensively in my work.</p> <p>18 I've drawn demonstration districts 19 previously. I've drawn real districts previously in 20 states that have involved the Voting Rights Act. I've 21 been an advisor to counsel with respect to Voting 22 Rights Act.</p> <p>23 That's all I can think of off the top of 24 my head.</p> <p>25 Q. All right. Do you consider yourself an expert</p>	<p>1 black belt. Those are the first two cases listed 2 here.</p> <p>3 Common Cause v. Rucho.</p> <p>4 Q. Okay.</p> <p>5 A. I think that was a part of NCLCV v. Hall, but I 6 wasn't deeply involved in that case.</p> <p>7 Q. All right.</p> <p>8 A. I think that's it.</p> <p>9 Q. Okay. Do you consider yourself an expert in 10 the use of Census Bureau data?</p> <p>11 A. Yes. That doesn't mean you know everything 12 about it, but I would say I'm an expert in it.</p> <p>13 Q. What's the basis for that expertise?</p> <p>14 A. I mean, it's been crucial to my work for over a 15 decade now.</p> <p>16 Q. Okay.</p> <p>17 A. I use ACS data in my dissertation.</p> <p>18 Q. All right. Has your testimony or expert report 19 ever been excluded by a court?</p> <p>20 A. Yes.</p> <p>21 Q. Which cases?</p> <p>22 A. I think the only one it was ever excluded was 23 the Fair Fight Action versus Raffensperger case.</p> <p>24 Q. Is it fair to say that many other courts have 25 declined to credit your testimony?</p>
<p>25</p> <p>1 in North Carolina communities of interest?</p> <p>2 A. I don't know about that.</p> <p>3 Q. Do you consider yourself to be an expert in 4 North Carolina's political geography?</p> <p>5 A. Yes.</p> <p>6 Q. What's the basis for your expertise in North 7 Carolina's political geography?</p> <p>8 A. Well, I've been testifying in North Carolina 9 cases regarding their politics and political geography 10 for about a decade now. North Carolina has been a 11 competitive state for call it 15 years at the 12 presidential level, longer than that at the Senate 13 level, so understanding various political coalitions 14 in North Carolina is certainly crucial to being able 15 to understand how a Senate race is likely to go or to 16 interpret cross tabs in those races. Those are some 17 examples.</p> <p>18 Q. Okay. Have you ever been an expert in a case 19 involving North Carolina that focused on the black 20 belt region?</p> <p>21 A. Yes.</p> <p>22 Q. What case was that?</p> <p>23 A. Well, Dickson v. Rucho and Covington -- now we 24 are going back a decade, so I may misremember, but I 25 believe they involve legislative districts in the</p>	<p>25</p> <p>1 A. That's certainly happened.</p> <p>2 Q. Have you ever been an expert on behalf of a 3 plaintiff in a Section 2 case?</p> <p>4 A. Yes.</p> <p>5 Q. Which cases?</p> <p>6 A. One that comes to mind is the Michigan case.</p> <p>7 Q. Agee versus Benson?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Any others?</p> <p>10 A. I don't believe so.</p> <p>11 Q. All right. Have you ever served as an expert 12 on behalf of a government entity contending that the 13 government entity was justified in creating a majority 14 minority district or a minority opportunity district?</p> <p>15 MR. STRACH: Objection. Can you repeat 16 it?</p> <p>17 Q. Sure. Have you ever served as an expert on 18 behalf of a government entity, contending that the 19 government entity was justified in creating a majority 20 minority district or a minority opportunity district?</p> <p>21 MR. STRACH: Objection.</p> <p>22 Go ahead.</p> <p>23 A. I don't know. Certainly in the Nairne case in 24 Louisiana there were examples of districts in my 25 report where I thought that there was a sufficiently</p>

1 compact minority group that we would have no objection
 2 to the demonstration districts drawn by their expert.
 3 So I guess in that, but I never did the full -- I
 4 didn't do Gingles.

5 Q. Okay. Have you ever taken a position as part
 6 of any expert work or any consulting work that a VRA
 7 district was required in a particular instance?

8 MR. STRACH: Objection.

9 Go ahead.

10 A. Was it required? I don't know that I've ever
 11 taken that position directly. But there's certainly
 12 claims to that effect that I have not contested. The
 13 work as the Voting Rights Act expert -- well, I don't
 14 know about that. There were certainly cases where I
 15 wouldn't have objected to it, but I can't think of any
 16 off the top of my head.

17 I guess the only way as a defendant for
 18 state you would do that would be if you were offering
 19 that as a defense to a 14th amendment claim. I don't
 20 think I've ever done that, but I'm not sure.

21 Q. Okay. You primarily work as an expert for
 22 defendants, correct?

23 A. I think that's right.

24 Q. Okay. Other than in Nairne, have you ever come
 25 to the conclusion in your work as an expert that

1 Q. Okay. All right. Which of the cases that are
 2 listed in this CV have involved -- let me ask it this
 3 way. Can you identify the cases that are listed on
 4 this CV in which you engaged in analysis of Gingles 1?

5 A. I can do my best.

6 I can't remember if we did in Carter v.
 7 Chapman.

8 LULAC v. Abbott.

9 Moore v. Lee.

10 Agee v. Benson.

11 Coca v. City of Dodge City.

12 Milligan v. Allen.

13 Nairne v. Ardooin.

14 Robin -- well, I don't remember Robinson
 15 v. Ardooin.

16 Stone v. Allen.

17 Q. Okay. All right. Let's turn to your opinions
 18 in this case. You wrote code for purposes of the
 19 report, your August report. Is that right?

20 A. That's right.

21 Q. Has any of that code been peer reviewed?

22 A. No.

23 Q. All right. What computer program or software
 24 did you use when you were working on your report?

25 A. R. Just the letter R.

29

31

1 Gingles 1 was satisfied?

2 MR. STRACH: Objection.

3 A. Yeah, I don't know the answer to that,
 4 primarily because there may be instances where I came
 5 to that conclusion, but it wasn't in a report and so
 6 didn't become a subject of testimony.

7 I can't remember. Some examples of where,
 8 I know that in the Lamone case, there were places
 9 where we froze three of the Congressional districts in
 10 Maryland because of VRA issues. I can't remember if
 11 we concluded that they were fully required or if they,
 12 we were just doing it arguendo.

13 I certainly thought, but I didn't -- well,
 14 yeah, I came to the conclusion in LULAC v. Abbott
 15 there were required VRA districts, but then the
 16 Galveston County case I'm not sure that's true any
 17 more.

18 Oh, yeah, in the Moore v. Lee case in
 19 Tennessee, I came to the conclusion that there was a
 20 VRA required district.

21 Obviously as a plaintiff in Agee v.
 22 Benson, I thought there were a lot of VRA required
 23 districts.

24 Talked about Nairne.

25 Yeah, that's all I can think of.

1 Q. Is that the only one?

2 A. Oh, yeah. So Dr. Mattingly's stuff is in
 3 Python.

4 Q. Anything else?

5 A. I think that's it.

6 Q. Okay. Did you use any redistricting software
 7 or platform as part of your work?

8 A. I might have looked at stuff in Dave's
 9 Redistricting, but I don't remember.

10 Q. What would you have looked at in Dave's
 11 Redistricting?

12 A. Well, you can look at maps that way.

13 Q. Right. What maps did you look at in Dave's
 14 Redistricting?

15 A. Well, I think I looked at demonstration
 16 districts that had been proposed, but I'm not sure.

17 Q. Okay.

18 (Recess taken.)

19 BY MS. THEODORE:

20 Q. All right. Dr. Trende, did you draw any
 21 districts as part of your work for this case?

22 A. I don't believe so.

23 Q. Okay. Did you attempt any adjustments of
 24 Mr. Esselstyn's district configurations for any of
 25 your work in this case?

30

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8 (Pages 29 to 32)

<p>1 A. I don't remember doing that. 2 Q. Okay. 3 A. If we go through the report and I remember 4 doing it, I'll let you know, but I really don't. 5 Q. Okay. So you don't, right now you don't 6 remember attempting to draw any alternative district 7 configurations for this case? 8 A. Not as I sit here, no. 9 Q. Okay. All right. I'm going to refer to 10 citizen voting age population data as CVAP data. Is 11 that fair? 12 A. Yes. 13 Q. All right. You have previously used CVAP data 14 to calculate the minority population of a potential 15 majority minority district in your work as an expert. 16 Is that right? 17 A. Yes. 18 Q. Okay. Are you aware of any CVAP data that is 19 more reliable than the data produced by the Census 20 Bureau in the American Communities Survey? 21 A. No. 22 Q. Are you aware of any CVAP data that is 23 available other than the data produced by Census 24 Bureau in the American Communities Survey? 25 A. No. There was an attempt to get an actual</p>	<p>1 If you did a count, you could find the true number of 2 black citizens of voting age population and all 3 citizens of voting age population, correct? 4 MR. STRACH: Objection. 5 Go ahead. 6 A. Yes. If there had been a citizenship question 7 on the Census, we would know the true count of black 8 citizens in these districts, at least as of 2020. 9 Q. Right. So I'm asking you would it surprise you 10 to learn that the black citizen voting age population 11 percentage in a particular region is higher than the 12 black voting age population in a particular region? 13 MR. STRACH: Objection. 14 Answer again. 15 A. Yeah. I mean, the answer, if you are taking 16 away variability from the Census data or the ACS data, 17 the answer is I wouldn't be surprised either way. 18 MS. THEODORE: I'm going to mark this 19 document as Exhibit 2. 20 (Deposition Exhibit No. 2 marked for 21 identification.) 22 BY MS. THEODORE: 23 Q. Dr. Trende, do you recognize this as a memo you 24 wrote in December -- 25 A. Hold on, please. I need to -- I have the old</p>
<p>33</p> <p>1 citizenship question on the Census that failed, in 2 which case we wouldn't have this headache. So, no. I 3 think the ACS is it. 4 Q. Okay. Would it surprise you to learn that the 5 black CVAP percentage in a particular region is 6 greater than the black voting age population 7 percentage? 8 A. I mean, no. There's error markings involved 9 with the data, it is just a sample. So it could be 10 zero when the VAP is 95 percent. That's just the 11 vagaries of sampling. 12 Q. I'm not sure I understood your answer. I'm 13 asking -- I'm not asking about any particular sample. 14 I'm just asking would it surprise you to learn that 15 the black CVAP percentage in a particular region is 16 greater than the black voting age population 17 percentage? 18 A. No. I understood your question. My response 19 is it doesn't or it wouldn't, because the CVAP we have 20 is a sample, which means that there's quite a lot of 21 variety that we might get compared to the actual VAP 22 population or compared to the actual citizen voting 23 age population, for that matter. 24 Q. I'm asking you about the actual citizen voting 25 age population. You agree that there's a true number.</p>	<p>35</p> <p>1 document up. Now I've got to get this document, 2 download it. 3 Okay. The Bernie memo. 4 Q. Do you recognize this as a memo that you wrote 5 in 2021 relating to Virginia's redistricting plans? 6 A. Yes. I co-wrote this with Bernie Grofman. 7 Q. Can you turn to page 8, please? 8 A. (Witness complies.) 9 Okay. 10 Q. All right. Do you see you say that "the 11 presence of non-citizen Latinos and Asian Americans in 12 a district can raise the black CVAP share above the 13 black VAP share making it a useful metric for 14 assessing a district's actual electorate"?" 15 Did I read that correctly? 16 A. Yes. 17 Q. Okay. You agree with that? 18 A. Yes, it is possible. 19 Like I said, it wouldn't surprise me 20 either way if you gave me the actual CVAP number and 21 it was higher or lower. 22 Q. Are you aware of whether the response date for 23 an American Community Survey data collection in 2020 24 was lower than normal as a consequence of the Covid 19 25 pandemic?</p>

1 A. I don't know whether it was higher or lower. I
 2 know the 2020 ACS data, I think they even have a
 3 disclaimer out on it --
 4 Q. Okay.
 5 A. -- "they" being the Census Bureau.
 6 Q. You yourself have relied on CVAP data from the
 7 ACS that includes responses from 2020 in prior expert
 8 reports, correct?
 9 A. Yeah. I don't think the CVAP is, on its -- I
 10 don't think the ACS data is on its own terms
 11 unreliable. It just has error markings.
 12 Q. Okay. Do you recall, have you ever included a
 13 disclaimer about collection issues for the 2020
 14 collection in any of your prior expert reports?
 15 MR. STRACH: Objection.
 16 Go ahead.
 17 A. No. I mean, this report we are using 2019 ACS
 18 data. I don't recall putting -- I think in the
 19 Stone case in the expert report there, whether or not
 20 I think that was directly raised, but, you know,
 21 maybe -- I'm assuming you have some other reports to
 22 walk through, so maybe we can address this
 23 specifically as we get there.
 24 Q. I'm asking you right now, do you recall in any
 25 report where you have used ACS data from 2020

1 Q. If both of those things are true, then the
 2 response bias in ACS responses would result in
 3 estimates that the black population there are likely
 4 to be lower than the true number. Is that correct?
 5 MR. STRACH: Objection.

6 Go ahead.
 7 A. If that is the only source of error and
 8 response bias in ACS, then that would be the case. If
 9 your assumption is true and if it is the only source
 10 of response bias. Of course, there would still be
 11 sampling error involved.

12 Q. All right. When you say if that were the only
 13 source of response bias, are you suggesting that that
 14 bias might be cancelled out by some other source of
 15 response bias that would make the black population
 16 likely to be oversampled?

17 MR. STRACH: Objection.
 18 Go ahead.
 19 A. No. I'm saying, you've given me a set of
 20 assumptions to operate under. I can answer the
 21 question under that set of assumptions, as long as we
 22 are clear that those are the only set of assumptions
 23 that I've been given. Then the answer to your
 24 question is yes.
 25 But if there's any other sources of

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1 including a disclaimer relating to the response rate
 2 for ACS data collection in 2020?
 3 A. Yes.
 4 Q. Which cases?
 5 A. Stone case.
 6 Q. Okay. What did you say in that disclaimer?
 7 A. I said that there were issues with the 2020 ACS
 8 data and that the Census Bureau had put out a warning
 9 on using those data.
 10 Q. Are you aware of whether higher socioeconomic
 11 status households became more likely to respond to the
 12 ACS during the pandemic?
 13 A. I don't know.
 14 Q. Okay. Are higher socioeconomic status
 15 households in the northeastern region of North
 16 Carolina more likely to be white or black?
 17 A. As a generalization, black -- I'm sorry, white.
 18 Q. Okay. So I want you to assume with me that
 19 higher socioeconomic status households became
 20 relatively more likely to respond to the ACS during
 21 the pandemic and that those households are more likely
 22 to be white than black. Are you with me so far?
 23 A. Okay.
 24 MR. STRACH: Objection.
 25 Go ahead.

1 response bias, then I can't answer it as clearly.
 2 This transcript is going to follow me for the rest of
 3 my life, as I've learned, so I want to be as clear
 4 about what it is I'm admitting and what I'm not as
 5 possible.

6 Q. Okay. Sitting here right now are you aware of
 7 any source of response bias for the ACS data
 8 collection from 2020 that resulted in oversampling of
 9 black households?

10 MR. STRACH: Objection.
 11 Go ahead.
 12 A. No.
 13 Q. Okay. Would you agree that it is common for
 14 experts in VRA cases to use CVAP data from American
 15 Community Survey that is disaggregated down to the
 16 block level?
 17 A. Sure.

18 Q. You've done that before yourself, correct?
 19 A. Yes.
 20 Q. Okay. Have you relied on a redistricting data
 21 hub in your work as an expert?
 22 A. Yes.
 23 Q. You agree that it is a reliable source for
 24 redistricting data?
 25 A. It's a reliable source for redistricting data.

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10 (Pages 37 to 40)

1 They have their methods for doing things that have
 2 their own drawbacks or shortcomings you should make
 3 yourself aware of. And what they do to disaggregate
 4 it isn't that different from what I would do in other
 5 areas. It's not that they have magically cured the
 6 problems that come with disaggregating down to the
 7 block group, but they do a good job and on its own
 8 terms it does what it says it does.

9 Q. Right. You are not aware of any mistakes or
 10 errors in the methodology that the redistricting data
 11 hub uses to disaggregate CVAP data down to the block
 12 level, are you?

13 MR. STRACH: Objection.

14 A. I'm not aware of any errors in the way they
 15 carry out the methodology. I think it does exactly
 16 what they say it does. That doesn't mean that the
 17 methodology doesn't have its limitations or drawbacks.

18 Q. Okay.

19 MS. THEODORE: All right. I'm going to
 20 transmit what I'm going to mark I believe as
 21 Exhibit 3.

22 (Deposition Exhibit No. 3 marked for
 23 identification.)

24 BY MS. THEODORE:

25 Q. Let me know when you have it open?

1 transcript?

2 A. (Witness complies.)

3 Okay.

4 Q. All right. You see you are discussing there
 5 the alternative remedial district that you drew?

6 A. Okay. I haven't looked at this transcript in a
 7 long time, but okay.

8 Q. Is that right?

9 A. Can you repeat the question?

10 Q. Yeah. Are you discussing on this page of the
 11 transcript the alternative remedial district that you
 12 drew?

13 A. Yes.

14 Q. Okay. In drawing that district, I'm looking at
 15 lines 17 through 19, you treated it as a requirement
 16 that your remedial district have a Hispanic citizen
 17 voting age population over 50 percent. Is that
 18 correct?

19 A. Yes. That's what counsel wanted.

20 Q. That's what you did?

21 A. Yeah. I don't think there's a legal
 22 requirement for it, but counsel wanted the number to
 23 be above 50 percent, so I said, okay, I can do that.

24 Q. Okay. So you were presenting remedial
 25 districts to the court that in your review had a

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1 A. Okay.

2 Q. All right. Do you recognize this as a
 3 transcript of an evidentiary hearing in a case called
 4 Soto Palmer versus Hobbs in the Western District of
 5 Washington?

6 A. Yes.

7 Q. This was held on March 8, 2024?

8 A. That's right.

9 Q. You testified in this hearing?

10 A. Yes.

11 Q. Okay. Is this a case in which the Court found
 12 that Washington State's legislative plans diluted
 13 Latino voting power in violation of Section 2 of the
 14 VRA?

15 A. Yeah. I wasn't involved in the merits phase,
 16 but that's my understanding.

17 Q. Okay. You were brought in as an expert at the
 18 remedial stage for the defendants?

19 A. That's right.

20 Q. All right. Then you evaluated potential
 21 remedial districts and also drew a potential
 22 alternative remedial district yourself. Is that
 23 correct?

24 A. Yeah. That's right.

25 Q. Okay. Can you turn to page 87 of this

1 Hispanic CVAP population of above 50 percent, correct?

2 A. That's what the point estimate was, sure.

3 We are well past Gingles 1 at this point,
 4 so the 50 percent line doesn't really carry legal
 5 significance. Counsel wanted me to get the point
 6 estimate above 50, so I did that.

7 Q. Okay. You were asked in this case and you
 8 didn't produce any maps to the court with a Hispanic
 9 CVAP population of less than 50 percent, right? You
 10 said that's correct?

11 A. That's right. The point estimates were all
 12 above 50 percent. Again, I don't think there's
 13 anything wrong with using ACS or CVAP data.

14 Where it becomes a problem is where
 15 there's a legally imposed 50 percent plus 1. I mean,
 16 if defendants in these cases, who sometimes say that
 17 Bartlett v. Strickland required remedial districts to
 18 be 50 percent plus 1, are correct, and the Cooper v.
 19 Harris view of things is not right, well, then at the
 20 remedial phase 50 percent plus 1 threshold becomes
 21 more important. But where I was at the time it didn't
 22 have the legal significance. It is just what counsel
 23 had asked me to do.

24 Q. Dr. Trende, you represented to the Court that
 25 your districts had a Hispanic citizen voting age

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11 (Pages 41 to 44)

1 population above 50 percent. Isn't that right true?
 2 A. I was asked whether my districts had a CVAP
 3 above 50 percent plus 1 at the remedial phase in a
 4 case where the CVAP had been used throughout. So I
 5 think that was truthful testimony in the context of
 6 the case.

7 Q. I'm just asking a very simple question. You
 8 represented to the Court that your remedial district
 9 had a Hispanic CVAP population above 50 percent.
 10 Isn't that true?

11 MR. STRACH: Objection.

12 Answer again.

13 A. Yeah, I'll answer it again. The testimony
 14 there is that the districts were above 50 percent plus
 15 1, but it comes in a remedial phase where we are well
 16 past any Gingles 1 concerns.

17 The CVAP data had been used throughout the
 18 case, it's a little bit late to raise a collateral
 19 attack on the CVAP data at the remedial phase. So I
 20 used the point estimate, and the point estimates in
 21 those districts are above 50 percent plus 1.

22 Q. Okay. And do you use the term "point estimate"
 23 on this page of the transcript?

24 A. No.

25 Q. Okay. I'm going to mark Exhibit 4.

1 right?

2 A. Yes.

3 Q. Then you stated, even though this was your
 4 goal, in your view racial considerations did not
 5 predominate because you also considered minimizing
 6 county and jurisdictional splits. Is that a fair
 7 characterization of what you are saying here?

8 A. I think what it says is that it was a goal to
 9 draw majority minority district, but I didn't let
 10 these concerns predominate prioritizing traditional
 11 principles of minimizing county and jurisdictional
 12 splits, respecting communities of interest, including
 13 the requests of the Yakama Nation and drawing
 14 reasonably compact contiguous districts.

15 Q. Okay. You further state: "It is likely
 16 possible to draw a district with a higher HCVAP or
 17 Democratic performance by allowing race or politics to
 18 predominate over these concerns. These maps were
 19 excluded from consideration."

20 Is that accurate?

21 A. Yes.

22 Q. Okay. Is what you are saying there that the
 23 likely existence of maps that had a higher HCVAP was
 24 evidence that racial concerns were not predominating
 25 in your map drawn?

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1 (Deposition Exhibit No. 4 marked for
 2 identification.)

3 BY MS. THEODORE:

4 Q. Let me know when you have it open?

5 A. Okay.

6 Q. Do you recognize this as a supplemental expert
 7 report you filed on February 23, 2024, in the Soto
 8 Palmer case?

9 A. Yes.

10 Q. All right. This is the report in which you
 11 drew an alternative remedial district for the state
 12 legislature in Washington?

13 A. Yes.

14 Q. Okay. You use the term minority majority
 15 district in this report. Is that the same as a
 16 majority minority district?

17 A. I don't know where I picked it up the opposite
 18 way around, but I do that.

19 Q. Okay. So minority majority, you're not
 20 intending that to mean anything different than
 21 majority minority?

22 A. That's right.

23 Q. Okay. Let's go to page 2. You say on page 2,
 24 I'm in the methodology paragraph, that your goal was
 25 to create a minority majority district. Is that

1 MR. STRACH: Objection.

2 Go ahead.

3 A. No.

4 Q. Okay. So what are you saying there?

5 A. I'm saying that I could have drawn a higher
 6 HCVAP or democratic performance map if I had allowed
 7 race or politics to predominate, but I didn't include
 8 those.

9 Q. You are citing the fact that you didn't include
 10 those as evidence that you did not allow race or
 11 politics to predominate. Is that correct?

12 A. Maybe I do that elsewhere, I don't know. I
 13 don't remember doing that. But in this sentence all
 14 it says is it's possible, it's probably possible to
 15 draw a district with a higher HCVAP or Democratic
 16 performance by allowing race or politics to
 17 predominate over these concerns. I didn't include
 18 those maps or consider them.

19 Q. What is the point you were trying to make with
 20 this sentence, Dr. Trende?

21 MR. STRACH: Objection.

22 Go ahead.

23 A. Well, this was six months ago, so I don't
 24 remember the exact point being made by the sentence.
 25 I think on its own terms it just says that, yes, you

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12 (Pages 45 to 48)

1 might be able to raise the HCVAP or Democratic
 2 performance of the districts. What I found was to do
 3 so would require allowing race or politics to
 4 predominate and so I didn't include those maps.

5 Q. Did your maps include any jurisdictional
 6 splits?

7 A. I-- there's certainly at least one, because as
 8 I note, one of the things I was trying to respect were
 9 the requests of the Yakama Nation and, as I recall,
 10 the Yakama Nation boundaries go across jurisdictions.

11 This whole mess, for lack of a better
 12 word, which led to this evidentiary hearing in March
 13 was that the proposed remedial maps had split grounds
 14 of the Yakama Nation. And so we had to revisit the
 15 remedial maps that had been discussed to try to find
 16 ways to craft a remedy that would also respect the
 17 request of the Yakama Nation.

18 And so, like I said, I remember there is a
 19 jurisdiction where the Yakama Nation's boundaries
 20 traverse the jurisdiction and my recollection is that
 21 I didn't split the jurisdiction, but, again, this is
 22 going on six months ago and I haven't reviewed this in
 23 depth since.

24 Q. I'm just trying to figure out, so you drew a
 25 map here that had a goal of getting the HCVAP above

1 in and slice out or at least I tried not to go in and
 2 slice out Hispanic communities. And when there was a
 3 choice between slicing out Hispanic communities or
 4 allowing other traditional redistricting criteria to
 5 predominate, I generally didn't defer to the question
 6 of Hispanic communities.

7 It is a little tricky here, because,
 8 again, the context of this whole thing was requests of
 9 the Yakama Nation, which is intertwined with race, but
 10 that was a directive from the Court that we had to
 11 take account of, so...

12 Q. Okay. When you are reviewing the report of
 13 another expert who has drawn a map that has an above
 14 50 percent minority CVAP or VAP population, what's
 15 your methodology for determining whether that expert
 16 allowed racial considerations to predominate?

17 MR. STRACH: Objection.

18 A. Again, the Supreme Court's guidance on here is
 19 a little more wishy washy than I think most social
 20 scientists or even lawyers would like. Sometimes the
 21 Court has even referenced looking to see if there are
 22 ungainly or strange arms or appendages to the
 23 district.

24 A lot of it does boil down to an eyeball
 25 test, but you can look at the data, you can look and

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1 50 percent, correct?

2 A. Right. Point estimate up to 50 percent,
 3 because that was what counsel asked for.

4 Q. I'm trying to understand in your view how do
 5 you determine whether racial concerns are
 6 predominating when someone has that goal?

7 A. Well, that might be what you are getting at,
 8 but that wasn't the question you asked me. The
 9 question you asked me was whether I split
 10 jurisdictions.

11 Q. Dr. Trende, I'm asking you that question now.

12 A. Okay. What is your question now?

13 Q. My question is, when the goal is to draw a
 14 district that has minority CVAP or minority BVAP
 15 population above 50 percent, how do you know when
 16 racial concerns are predominating in drawing that map
 17 in your view?

18 MR. STRACH: Objection.

19 Go ahead.

20 A. Well, that's a very tricky thing to do.
 21 Supreme Court guidance on this is sometimes all over
 22 the place. When I drew it, I know what's going on in
 23 my head, so I know that I'm not letting race
 24 predominate. I had a generalized idea of where the
 25 Hispanic population in the area was, but I didn't go

1 see the way when a district does slice up
 2 jurisdictions, or pick one jurisdiction over the
 3 other, you can look at the way it has been cut. But I
 4 don't think the Court has ever proscribed a 50 percent
 5 plus 1 rule -- sorry, a specific rule that you can
 6 use.

7 Q. Do you have a methodology that's more specific
 8 than you can look at the data for determining whether
 9 a district allows racial considerations to
 10 predominate?

11 MR. STRACH: Objection.

12 Go ahead.

13 A. So I think I just gave a rather lengthy
 14 discourse on methodology there. So I don't think
 15 that's a fair characterization. I think that the
 16 Court hasn't given as much guidance as we might like
 17 and that sometimes in the Courts' instructions to
 18 lawyers and experts have been things like looking to
 19 see if there are odd arms or appendages to districts,
 20 or if they have bizarre shapes.

21 But as I said, sometimes you can look at
 22 the data, you can look at the way that a map when it
 23 does split jurisdictions, how it splits them, whether
 24 it splits them on racial grounds. You can, if you're
 25 familiar with the communities of interest, you can

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13 (Pages 49 to 52)

<p>1 consider those.</p> <p>2 You can look at when choices are made to</p> <p>3 depart from compactness, if that can be ascribed to</p> <p>4 racial reasons.</p> <p>5 Those are the various ways I'm aware of</p> <p>6 that you can do it.</p> <p>7 You can also run, in some circumstances</p> <p>8 you can run computer simulations, although the Court</p> <p>9 has been skeptical of that I think is the fair term.</p> <p>10 So I'm not entirely sure what the status</p> <p>11 of that is.</p> <p>12 Q. Okay. If there were an alternative map that</p> <p>13 had a higher minority population, but did worse on</p> <p>14 considerations like compactness, would you view that</p> <p>15 as evidence that racial considerations did not</p> <p>16 predominate?</p> <p>17 MR. STRACH: Objection.</p> <p>18 Go ahead.</p> <p>19 A. It would depend on circumstances. It might be</p> <p>20 evidence. I don't know that I'd consider it proof.</p> <p>21 Q. All right. Let's go to page 13 of this</p> <p>22 document, which is your supplemental report to Palmer.</p> <p>23 Are you there?</p> <p>24 A. I think so. Is this figure 6?</p> <p>25 Q. No.</p>	<p>1 these estimates. Is that correct?</p> <p>2 A. That's right. Like I said, I came into this</p> <p>3 case pretty late in the game. But, no, there's no</p> <p>4 error margins.</p> <p>5 Q. Did you calculate error margins for these</p> <p>6 estimates before submitting them to the Court?</p> <p>7 A. I don't think I did.</p> <p>8 Q. Okay. Did you believe that the figures you</p> <p>9 were presenting to the Court in this case were</p> <p>10 unreliable?</p> <p>11 MR. STRACH: Objection.</p> <p>12 A. I don't think so, but if someone had calculated</p> <p>13 error margins they are real.</p> <p>14 Q. So you represented to the Court that your</p> <p>15 district was a 50 percent plus 1 minority district</p> <p>16 solely on the basis of CVAP calculations without any</p> <p>17 margin of error. Isn't that correct?</p> <p>18 MR. STRACH: Objection.</p> <p>19 A. I think I said it was 51.1 percent under the</p> <p>20 2021 data and 50.3 using the 2020 data.</p> <p>21 I didn't calculate error margins, because</p> <p>22 this case had been going on for quite some time and no</p> <p>23 one was using the error margins, but they were still</p> <p>24 there. And if someone were to say this is what the</p> <p>25 error margin is, it includes 50 percent, I think you</p>
<p>53</p> <p>1 A. That's page 13 of the PDF. I'm sorry.</p> <p>2 Okay, I'm here. 4.3?</p> <p>3 Q. 4.3, yes. You report there that your proposed</p> <p>4 map district 15 has an HCVAP of 51.1 percent using</p> <p>5 2021 data and 50.3 percent using the 2020 data. Did I</p> <p>6 read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Does 2021 data refer to ACS one year</p> <p>9 estimate from 2021?</p> <p>10 A. I don't think so.</p> <p>11 Q. What does it refer to?</p> <p>12 A. Five-year estimate.</p> <p>13 Q. The five-year 2021 estimate?</p> <p>14 A. Right. So the data from 2021, 2020, '19, '18</p> <p>15 and '17.</p> <p>16 Q. Okay. Does the 2020 data, refers to ACS</p> <p>17 five-year estimate that includes 2016 through 2020?</p> <p>18 A. That's right.</p> <p>19 Q. Okay. This report doesn't suggest to the Court</p> <p>20 that there's anything unreliable about ACS data that</p> <p>21 includes 2020 responses. Is that correct?</p> <p>22 MR. STRACH: Objection.</p> <p>23 Go ahead.</p> <p>24 A. That's right.</p> <p>25 Q. Okay. You don't include margins of error for</p>	<p>55</p> <p>1 would be forced to say, well, okay, maybe it is not</p> <p>2 50 percent plus 1.</p> <p>3 I don't know whether the error margins</p> <p>4 here include 50 percent or not, though.</p> <p>5 Q. Okay. To calculate these estimates -- well,</p> <p>6 the districts that you presented in this report split</p> <p>7 block groups. Is that correct?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. So to calculate these estimates you</p> <p>10 engaged in a disaggregation process to disaggregate</p> <p>11 block group level CVAP down to the block level. Is</p> <p>12 that correct?</p> <p>13 A. That's right.</p> <p>14 Q. Was that process similar to the process used by</p> <p>15 the redistricting data hub?</p> <p>16 A. Yes.</p> <p>17 Q. All right. In your report in this case you</p> <p>18 state that there are four issues with the process for</p> <p>19 disaggregating block groups CVAP data down to block</p> <p>20 level CVAP data. Do you recall that?</p> <p>21 A. Where are we?</p> <p>22 Q. Page 17 of your report.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. In your report in Soto Palmer when you</p> <p>25 were using CVAP level -- CVAP data at the block level,</p>

1 you didn't identify any of those four issues. Is that
 2 correct?
 3 A. Well, that's right. Of course not.
 4 Q. Okay.
 5 A. We were in the remedial phase there, well past
 6 Gingles 1. But they are still present.
 7 Q. I'm going to transmit what I'm going to mark I
 8 think as Exhibit 5.
 9 (Deposition Exhibit No. 5 marked for
 10 identification.)
 11 BY MS. THEODORE:
 12 Q. Is it your view that you can present unreliable
 13 data to the Court at the remedial phase?
 14 MR. STRACH: Objection.
 15 A. No. It is my view that by the remedial phase
 16 it is too late to raise collateral attacks on the
 17 data. There's ways the data have been used and it is
 18 fine to use data in that sense of things.
 19 I don't know whether these error margins
 20 include 50 percent or not, because we didn't calculate
 21 the error margins. But all the issues present with
 22 ACS data were present in all the maps drawn at the
 23 remedial phase on the Soto Palmer case.
 24 Q. But you did not identify any of those issues to
 25 the Court?

1 A. That's true.
 2 Q. Okay. You felt comfortable doing that, even
 3 though you didn't present any margin of error?
 4 A. Well, yeah.
 5 Q. Okay. Let's turn back to Exhibit 1, which is
 6 your expert report, and in particular to pages 49
 7 through 51, which is in the place in your CV where you
 8 list prior expert engagements?
 9 A. Okay.
 10 Q. Okay. Can you identify cases in your CV in
 11 which you criticized an expert for failing to
 12 calculate margins of error associated with minority
 13 CVAP data?
 14 A. Stone v. Allen.
 15 Q. Okay. Any cases other than Stone versus Allen?
 16 A. No.
 17 Q. Okay. When was the report filed in Stone
 18 versus Allen?
 19 A. I'll say spring. It was right after my kid's
 20 spring break, so late March, early April 2024.
 21 Q. Okay. Before '24 have you ever criticized
 22 another expert for failing to calculate margins of
 23 error associated with minority CVAP data?
 24 A. I don't think I was ever asked to look at
 25 whether their numbers showed failed the error margin.

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1 A. Well, no. We were in the remedial phase and
 2 people have been using the data a given way. I wasn't
 3 asked to inspect the data. I was asked to draw the
 4 map with point estimates at above 50 percent, which is
 5 what I did.
 6 If Dr. Ayscue had gone back and calculated
 7 error margins and said these error margins include
 8 50 percent, my response would be, well, okay, these
 9 aren't, I guess maybe we can't say with confidence
 10 these aren't minority majority districts, but we
 11 aren't in the Gingles 1 world, so there's not legal
 12 significance to 50 percent plus 1 threshold, in my
 13 view.
 14 Q. All right. Your view is Dr. Ayscue should have
 15 calculated margins of error for districts that you
 16 were presenting?
 17 A. If he wanted to challenge my districts on that
 18 ground, that would have been the way to do it. But in
 19 this case, which, again, had been going on for, to my
 20 understanding, almost a year at this point, my view
 21 was it was a little bit late to start talking about
 22 data issues at the remedial phase.
 23 Q. Okay. You certified the numbers in your Soto
 24 Palmer report were true and correct to the best of
 25 your knowledge and belief, right?

1 And generally even if they're reporting CVAP numbers,
 2 the VAPs are above 50 percent plus 1. So in my view
 3 it's a completely different situation for Gingles 1.
 4 But, no, I haven't looked at it before then.
 5 Q. Okay.
 6 A. Stone might have been the first time I ever
 7 encountered a map where the VAP was below 50 percent,
 8 but instead plaintiffs were relying on CVAP to prove
 9 Gingles 1.
 10 Q. In fact, in your 2023 preliminary injunction
 11 report in this case you did not comment on the absence
 12 of a margin of error for minority CVAP calculations.
 13 Isn't that correct?
 14 A. Yeah. I imagine I wasn't asked to look at it.
 15 Q. You weren't asked to look -- you weren't asked
 16 to be an expert on Gingles 1 issues at the preliminary
 17 injunction stage in this case?
 18 A. That's not what I said. I said I wasn't asked,
 19 I probably wasn't asked to look at the error margins
 20 for the CVAP. It was a preliminary injunction, so
 21 things were going quickly and I was busy with other
 22 cases. I don't know if I would have had time to do it
 23 even if I had been asked.
 24 Q. You had a month to write your preliminary
 25 injunction report. Isn't that right?

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15 (Pages 57 to 60)

1 A. I don't know how much time I had. Like I said,
 2 I was busy with other matters. I just wrapped up a
 3 trial in the Michigan case. We were in the remedial
 4 phase there. We were fighting a war in Wisconsin and
 5 it's the holidays. So even if I had been asked to
 6 look at the error margins, I don't know that I would
 7 have had time to do it.

8 As I recall my preliminary injunction
 9 report in this case was pretty bare bones.

10 Q. All right. Before 2024 had you ever calculated
 11 a margin of error associated with a district CVAP
 12 point estimate?

13 A. I don't remember.

14 Q. So sitting here today, you can't think of any
 15 time before 2024 when you calculated a margin of error
 16 associated with a district's CVAP point estimate?

17 A. As I said, can't remember.

18 Q. You understand that black CVAP estimates from
 19 the ACS only -- let me start again.

20 You understand that black CVAP estimates
 21 from the ACS exclude people who are part black, part
 22 Hispanic?

23 A. Yes.

24 Q. Okay. For purpose of black CVAP black is
 25 defined by Census Bureau to include people who are

1 Q. Sure. In cases that are not coalition cases,
 2 it is standard to use any part black to calculate the
 3 black voting age population. Is that fair?

4 A. Yeah, I think that's right.

5 Q. Okay. Okay. So in black CVAP calculation
 6 citizens who are part black part Hispanic would be
 7 included in the denominator, but the numerator. Is
 8 that right?

9 A. I guess it would depend how they answered the
 10 Census question. If they, if the only option given to
 11 them are black, Hispanic or American Indian, they
 12 check black -- sorry, if they check black as the
 13 answer on the ACS question, then I guess they would be
 14 counted as black.

15 Q. All right. Dr. Trende, if they checked black
 16 and Hispanic on the ACS questionnaire, they would be
 17 included in the denominator for the black CVAP
 18 proportion calculation, but not the numerator. Is
 19 that correct?

20 A. I don't know if they would be counted as black
 21 or not, like in the black category for the Census. I
 22 don't think you just exclude them all together from
 23 all consideration.

24 But it is possible. Depends on how they
 25 answered the question.

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1 black alone, part black and part white, and part black
 2 and part American Indian. Is that correct?

3 A. That's correct.

4 Q. Okay. People who are part black and part
 5 Hispanic are counted as black for purposes of the
 6 Census count of black residents of voting age. Is
 7 that right?

8 A. If you are using any part black, yes.

9 Q. Any part black is the standard that people use
 10 in redistricting cases. Isn't that true?

11 A. As I understand it, it is redistricting cases
 12 where only one race, one racial group is at issue. If
 13 you have multiple racial groups, it is a little bit
 14 more unclear.

15 Q. Okay.

16 A. Because your groups can add up to greater than
 17 100 percent. So if you are doing like a coalition
 18 district, any part number results in pretty
 19 substantial double count.

20 Q. You understand this is not a coalition case,
 21 correct?

22 A. I know. It is just the way you asked that
 23 question. This transcript is going to follow me
 24 around. If I catch something, I try to clarify any
 25 nuances. I do my best.

1 Q. So sitting here today you don't have an
 2 understanding of how people who mark that they are
 3 part black and part Hispanic are included in the black
 4 CVAP proportion calculation?

5 A. Oh, so your question is -- okay. Your question
 6 is that if they answer the ACS data that they are both
 7 black and Hispanic, not that that's how they identify,
 8 but that's how they answered the question, they would
 9 be in the denominator, but not the numerator -- or the
 10 other -- yeah, they would be in the denominator, but
 11 not the numerator. That's right.

12 Q. Okay. Unlike in the black voting age
 13 population calculation, where they would be in the
 14 numerator and the denominator. Is that right?

15 A. Right. Yeah. There's lots of limitations to
 16 the ACS data. That's one of them.

17 Q. All right. So for that reason black CVAP
 18 estimates from Census Bureau are going to tend to be
 19 lower than actual number of citizens of voting age
 20 population who are any part black. Is that true?

21 MR. STRACH: Objection.

22 A. It is possible.

23 Q. Well, if there's anybody in the relevant region
 24 who marks on the ACS response that they are part black
 25 and part Hispanic, they won't be counted as black for

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<p>1 purposes of the black CVAP calculation, correct? 2 MR. STRACH: Objection. 3 A. Right. 4 Q. Okay. So isn't it true that black CVAP 5 estimates will tend to be lower than the number of 6 citizens of voting age population who are any part 7 black? 8 MR. STRACH: Objection. 9 A. Well, it depends on whether there are people 10 who fit the category that you describe who are also 11 citizens in the district. 12 Q. Okay. If there's anybody in the district who 13 is a citizen who marks that they are part black and 14 part Hispanic, then the black CVAP estimates from the 15 Census Bureau are going to be lower than the actual 16 number of citizens of voting age population who are 17 any part black. Is that correct? 18 A. If there's anyone -- not quite. If there's 19 anyone in the district who, excuse me, or in the 20 jurisdiction, who is, for example, part black or part 21 Hispanic, who is a citizen and who was surveyed by the 22 ACS, then the ACS estimates will be lower. 23 Q. The ACS black CVAP estimates will be lower than 24 the actual number of citizens of voting age population 25 who are any part black in the situation that you just</p>	<p>1 Q. So you calculated the number of Census tracts 2 in North Carolina using your R code? 3 A. Yes. 4 Q. Okay. 5 A. I downloaded the shapefile for Census tracts 6 and there were 1,776 Census tracts. 7 Q. This is all based on 2020 Census data? 8 A. To my understanding, yes. 9 Q. Okay. Then you took the number of Census 10 tracts and divided by North Carolina's 2020 Census 11 population to reach that average Census tract 12 population of 5,878? 13 A. That's my recollection. 14 Q. Okay. Is that the same for the numbers you 15 report for block groups? 16 A. That's my recollection. 17 Q. All right. This is Exhibit 6. 18 (Deposition Exhibit No. 6 marked for 19 identification.) 20 BY MS. THEODORE: 21 Q. Let me know when you have it up? 22 A. Okay. 23 Q. All right. Does this look to you like a 24 printout from Census Bureau website tallies page? 25 A. I have no idea. I can't authenticate this for</p>
<p>65</p> <p>1 described? 2 A. Correct. 3 Q. Okay. Okay. Let's turn to page 6 of your 4 report? 5 MR. STRACH: Did we skip to Exhibit 5? 6 Are going to get to that later? You were having that 7 loaded up. 8 MS. THEODORE: That's a good point. We 9 might get to that later, but we can skip over it for 10 now. 11 MR. STRACH: Okay. 12 BY MS. THEODORE: 13 Q. Are you on page 6, Dr. Trende? 14 A. I am. 15 Q. Okay. You see there's a paragraph there 16 stating counties are then further broken into Census 17 tracts? 18 A. Yes. 19 Q. This paragraph contains basic information about 20 Census tracts and block groups and Census blocks in 21 North Carolina? 22 A. Correct. 23 Q. All right. What's the source for the 24 information in this paragraph? 25 A. My R code.</p>	<p>67</p> <p>1 you. I don't have reason to dispute you, but I can't 2 say for sure what it is. 3 Q. Have you ever seen this page before? 4 A. Not this particular page, no. 5 Q. All right. 6 A. That I know of. 7 Q. All right. You understand that the Census 8 Bureau tabulates, creates tallies of the number of 9 Census blocks and block groups in Census tracts? 10 A. Yes. 11 Q. Okay. Let's go down to page 6. 12 A. Okay. 13 Q. All right. Do you see a table titled, "2020 14 Census Tallies of Census Tracts, Block Groups and 15 Blocks"? 16 A. Yes. 17 Q. Scroll down to row 37 of that table. Do you 18 see a row for North Carolina? 19 A. Yes. 20 Q. Okay. Do you see Census Bureau is reporting 21 that North Carolina has 2,672 Census tracts? 22 A. Yes. 23 Q. All right. Your report on page 6 says 1,776 24 Census tracts? 25 A. Yes.</p>

<p>1 Q. So your number is wrong, isn't it?</p> <p>2 MR. STRACH: Objection.</p> <p>3 A. It might be. That's taken from the data source</p> <p>4 that Dr. Collingwood and I both used to download data,</p> <p>5 but if it doesn't download it correctly, then it is</p> <p>6 wrong.</p> <p>7 Q. Dr. Collingwood didn't create R code to tally</p> <p>8 up Census tracts, did he?</p> <p>9 A. No. But he says in his report that he</p> <p>10 regularly uses the <code>tidycensus</code> package in R, which is</p> <p>11 what I'm relying on.</p> <p>12 But if it gets the geographies wrong, then</p> <p>13 I guess that's wrong.</p> <p>14 Q. Okay. If that number is wrong, then the number</p> <p>15 you gave to the average population of a North Carolina</p> <p>16 Census tract is also wrong, isn't it?</p> <p>17 MR. STRACH: Objection.</p> <p>18 A. Yeah. I mean, that's just meant to give an</p> <p>19 idea of the scope of how big these things we're</p> <p>20 talking about -- yeah. If it is 2600, then the</p> <p>21 average would probably be more around 4,000 residents.</p> <p>22 Q. Right. Okay.</p> <p>23 You see on row 37 the Census Bureau is</p> <p>24 reporting that North Carolina has 7,111 block groups?</p> <p>25 A. Yes.</p>	<p>1 average population would probably be more like 1200,</p> <p>2 1300.</p> <p>3 Q. 1468 sound about right?</p> <p>4 A. I have no idea. I can do rough estimates in my</p> <p>5 head. I can't do that.</p> <p>6 Q. All right. Well, you understand the population</p> <p>7 of North Carolina in the 2020 Census is 10,439,388?</p> <p>8 A. I'll take your word for it.</p> <p>9 Q. All right. That 10,439,388 divided by 7,111 is</p> <p>10 1468? Does that sound about right?</p> <p>11 A. I appreciate the vote of confidence, but I</p> <p>12 cannot even begin to do that in my head.</p> <p>13 Q. All right. You say in this paragraph that the</p> <p>14 largest block group in North Carolina contained 13,967</p> <p>15 residents. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. How did you calculate that?</p> <p>18 A. That's, again, out of the <code>tidycensus</code> data.</p> <p>19 Q. Okay. That's in your R code somewhere?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Do you know where the block group in</p> <p>22 North Carolina that contains 13,967 residents is</p> <p>23 located?</p> <p>24 A. I would guess it is around Fayetteville, but I</p> <p>25 don't know for sure.</p>
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<p>1 Q. Your report says on page 6, North Carolina has</p> <p>2 4,967 block groups?</p> <p>3 A. That's right.</p> <p>4 Q. All right. So your statement in your report</p> <p>5 that there are 4,967 block groups in North Carolina is</p> <p>6 wrong, isn't it?</p> <p>7 MR. STRACH: Objection.</p> <p>8 A. I don't know that that's the case. I just know</p> <p>9 that using the <code>tidycensus</code> data that's downloaded from</p> <p>10 the Census API, that's what you come up with. But if</p> <p>11 there's not some nuance or other method to explain the</p> <p>12 data, then, yeah, I guess <code>tidycensus</code> provides the</p> <p>13 wrong data here.</p> <p>14 Q. Or you could have implemented <code>tidycensus</code></p> <p>15 incorrectly. Isn't that right?</p> <p>16 MR. STRACH: Objection.</p> <p>17 A. I suppose it is possible.</p> <p>18 Q. Okay. You say average population of a block</p> <p>19 group in North Carolina was 2,102 residents on page 6,</p> <p>20 right?</p> <p>21 A. Right.</p> <p>22 Q. That number is also wrong if North Carolina has</p> <p>23 7,111 block groups, isn't it?</p> <p>24 MR. STRACH: Objection.</p> <p>25 A. Yes. If it has 7,111 block groups, then</p>	<p>1 Q. All right.</p> <p>2 A. You get very large precincts and block groups</p> <p>3 down there with the military installation that I'm</p> <p>4 blanking on.</p> <p>5 Q. Are you aware that the North Carolina Office of</p> <p>6 State Budget and Management publishes statistics from</p> <p>7 the Census on its website?</p> <p>8 A. No.</p> <p>9 Q. All right. Mark this as Exhibit 7.</p> <p>10 (Deposition Exhibit No. 7 marked for</p> <p>11 identification.)</p> <p>12 BY MS. THEODORE:</p> <p>13 Q. Let me know when you have it open?</p> <p>14 A. Okay.</p> <p>15 Q. All right. Does this look to you like a</p> <p>16 printout from the website of the North Carolina Office</p> <p>17 of State Budget and Management?</p> <p>18 A. I don't have a reason to dispute you on that.</p> <p>19 Q. All right. You see it has 7,111 records</p> <p>20 reflecting the 7,111 block groups?</p> <p>21 A. I see that number, yeah.</p> <p>22 Q. All right. You want to scroll down to page 2</p> <p>23 of the PDF?</p> <p>24 A. Okay.</p> <p>25 Q. You see where it says area type block group,</p>
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18 (Pages 69 to 72)

<p>1 then it has the number 7,111?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. All right. Then scroll down to the last</p> <p>4 page.</p> <p>5 A. Last page is blank.</p> <p>6 Q. I'm sorry, you are right. Second to last page.</p> <p>7 A. All right.</p> <p>8 Q. All right. Does this look like a table of the</p> <p>9 block groups in North Carolina sorted by total</p> <p>10 population?</p> <p>11 A. If you represent that to me, I have no reason</p> <p>12 to dispute you.</p> <p>13 Q. All right. You see it looks like the largest</p> <p>14 block group in North Carolina is Wake County, it has</p> <p>15 8,962 people?</p> <p>16 A. I see the table says value 8,962.</p> <p>17 Q. For total population?</p> <p>18 A. If you say so.</p> <p>19 Q. Well, it says total population right next to</p> <p>20 it, doesn't it?</p> <p>21 A. Yeah, it does say that. I just don't know that</p> <p>22 that's what's actually been pulled up by this table,</p> <p>23 but if that's what you represented, I don't have a</p> <p>24 reason to dispute you.</p> <p>25 Q. All right. Sitting here today do you have</p>	<p>1 records?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Go down to page 2.</p> <p>4 A. Okay.</p> <p>5 Q. You see the area type described is tract?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Why don't you scroll down to page 4?</p> <p>8 A. (Witness complies.)</p> <p>9 Okay.</p> <p>10 Q. All right. Does this look like a table from</p> <p>11 the North Carolina Office of State Budget and</p> <p>12 Management website that's sorting the tracts in North</p> <p>13 Carolina on the basis of total population?</p> <p>14 A. I've never been to this website before, so I</p> <p>15 can't say what it looks like, but I have no reason to</p> <p>16 dispute you on that.</p> <p>17 Q. Do you see the largest Census tract reported on</p> <p>18 this table has 14,610 people in it?</p> <p>19 A. Yes. At least, if that's what this is actually</p> <p>20 reflecting, if it is all the tracts in North Carolina</p> <p>21 sorted by population.</p> <p>22 Q. Okay. You say in your report that the largest</p> <p>23 tract in North Carolina contains 34,130 residents,</p> <p>24 correct?</p> <p>25 A. Correct.</p>
<p>73</p> <p>1 confidence in your report's statement that the largest</p> <p>2 block group in North Carolina contained 13,967 people?</p> <p>3 MR. STRACH: Objection.</p> <p>4 A. First, I'd want to go back and double-check</p> <p>5 against what you are suggesting, but I don't -- R code</p> <p>6 typically doesn't lie, so maybe there's a mistake with</p> <p>7 tidycensus or maybe there's a mistake in the code.</p> <p>8 The real point of this exercise, which I</p> <p>9 don't think is terribly controversial, is to kind of</p> <p>10 help the Court understand what Census geographies are,</p> <p>11 not to talk about the average populations or whatnot.</p> <p>12 You are just trying to get a sense of, okay, counties</p> <p>13 break down in tracts, break down in block groups,</p> <p>14 which break down in blocks.</p> <p>15 MS. THEODORE: I'll transmit the next</p> <p>16 exhibit. Can you let me know when you have it open?</p> <p>17 (Deposition Exhibit No. 8 marked for</p> <p>18 identification.)</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MS. THEODORE:</p> <p>21 Q. All right. You see this is another printout</p> <p>22 from the North Carolina Office of State Budget and</p> <p>23 Management?</p> <p>24 A. Yes.</p> <p>25 Q. All right. You see it says it has 2,672</p>	<p>75</p> <p>1 Q. Okay. Where is that tract?</p> <p>2 A. I don't know.</p> <p>3 Q. All right. Do you have confidence sitting here</p> <p>4 today that there's a tract that contains that many</p> <p>5 residents in North Carolina?</p> <p>6 MR. STRACH: Objection.</p> <p>7 A. Well, it is the same answer as before. I'd</p> <p>8 want to go back and check my data. But I don't have</p> <p>9 any reason to think that tidycensus got it wrong.</p> <p>10 Maybe there's some nuance between these and what the</p> <p>11 table shows. I don't know.</p> <p>12 Q. When you say tidycensus got it wrong or your</p> <p>13 implementation of tidycensus was wrong, right?</p> <p>14 MR. STRACH: Objection.</p> <p>15 A. It's possible.</p> <p>16 Q. Okay.</p> <p>17 A. By the way, I don't want to cut you off in the</p> <p>18 middle of a line of questioning, but we have been</p> <p>19 going for a little over an hour, so whenever you get</p> <p>20 to a different change of topic, it might be a good</p> <p>21 time for a break. We can go for another hour and then</p> <p>22 take lunch.</p> <p>23 MS. THEODORE: Yeah. Why don't we take a</p> <p>24 break right now, like 5 minutes.</p> <p>25 (Recess taken.)</p>

<p>1 BY MS. THEODORE:</p> <p>2 Q. Did you discuss anything about this deposition</p> <p>3 with counsel on the break?</p> <p>4 A. Yes.</p> <p>5 Q. What did you discuss?</p> <p>6 A. I said I didn't know where the discrepancy came</p> <p>7 from on the Census tracts versus -- what you report</p> <p>8 versus what the report says.</p> <p>9 Q. Okay. What did counsel say?</p> <p>10 MR. STRACH: I object to that, instruct</p> <p>11 him not to answer that.</p> <p>12 A. I'll listen to counsel.</p> <p>13 MS. THEODORE: Your position is that I'm</p> <p>14 not entitled to know what you're telling Dr. Trende</p> <p>15 during the pendency of the deposition about the</p> <p>16 deposition?</p> <p>17 MR. STRACH: We didn't discuss any of his</p> <p>18 answers or come back in here to correct anything.</p> <p>19 Anything we discussed would have been privileged going</p> <p>20 forward.</p> <p>21 BY MS. THEODORE:</p> <p>22 Q. Dr. Trende, did you discuss any of your prior</p> <p>23 answers with counsel?</p> <p>24 A. Only to the extent that I didn't know where</p> <p>25 the -- I brought it up that I didn't know where the</p>	<p>1 Q. All right. Okay. In your August report you</p> <p>2 state that you're calculating margins of error for the</p> <p>3 black CVAP percentage point estimates for</p> <p>4 Mr. Esselstyn's demonstration districts, correct?</p> <p>5 A. That's right.</p> <p>6 Q. All right. And I think you previously</p> <p>7 testified that the only time you have previously</p> <p>8 calculated margins of error for CVAP point estimates</p> <p>9 was in the Stone versus Allen case. Is that right?</p> <p>10 A. Yes. Actually, just as you bring that up --</p> <p>11 yeah, actually I think that's right.</p> <p>12 Q. Okay. You say in your report that you relied</p> <p>13 on the method of calculating margins of error in</p> <p>14 chapter 8 of the American Community Survey Handbook.</p> <p>15 Is that correct?</p> <p>16 A. That's right.</p> <p>17 Q. All right. I'm going to mark what I just</p> <p>18 transmitted in the chat as Exhibit 9.</p> <p>19 (Deposition Exhibit No. 9 marked for</p> <p>20 identification.)</p> <p>21 BY MS. THEODORE:</p> <p>22 Q. Can you let me know when you have it up?</p> <p>23 A. Okay.</p> <p>24 Q. All right. Do you recognize this as chapter 8</p> <p>25 of the American Community Survey Handbook?</p>
77	79

<p>1 difference came from.</p> <p>2 Q. Okay. Did counsel say anything about your</p> <p>3 prior answers?</p> <p>4 A. No.</p> <p>5 Q. All right. With respect to those issues we</p> <p>6 were talking about in paragraph on page 6 of your</p> <p>7 report, did you do anything to verify what tidy census</p> <p>8 was producing from your code?</p> <p>9 A. No. It is something that people regularly rely</p> <p>10 upon, so no.</p> <p>11 Q. You didn't go check the Census Bureau website</p> <p>12 to make sure that when your code said 1776 Census</p> <p>13 tracts, that that was consistent with the Census</p> <p>14 Bureau website?</p> <p>15 A. No. Again, this is a minor point in the report</p> <p>16 that doesn't have anything to do with final</p> <p>17 conclusions. It is just meant to kind of illustrate,</p> <p>18 you know, we talk about tracts and block groups and</p> <p>19 blocks, and everything. The whole point here is to</p> <p>20 kind of, in case the Court didn't already have it,</p> <p>21 give an understanding of what these things are.</p> <p>22 So it is not the type of thing that I</p> <p>23 would have dug down and verified, anyway. But, like I</p> <p>24 said, I'm genuinely curious where the discrepancy</p> <p>25 comes from.</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. The black CVAP percentage in a</p> <p>3 particular region is a proportion, correct?</p> <p>4 A. Right.</p> <p>5 Q. All right. In particular it's the proportion</p> <p>6 created by dividing the number of black citizens of</p> <p>7 voting age by number of total citizens of voting age?</p> <p>8 A. That's right.</p> <p>9 Q. All right. Let's turn to page 64 of the ACS</p> <p>10 handbook.</p> <p>11 A. (Witness complies.)</p> <p>12 Okay.</p> <p>13 Q. Do you see the formula in the middle of the</p> <p>14 page with number 6 in parentheses next to it?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Is that the correct formula to use</p> <p>17 to calculate the margin of error for a black CVAP</p> <p>18 percentage point estimate?</p> <p>19 A. Yes.</p> <p>20 Q. All right. The formula is for calculating the</p> <p>21 margin of error of a proportion represented by X</p> <p>22 divided by Y?</p> <p>23 A. Correct.</p> <p>24 Q. Here X is black CVAP, and Y is total CVAP?</p> <p>25 A. Correct.</p>
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1 Q. All right. So first you calculate the margin
 2 of error for black CVAP and for total CVAP, right?
 3 A. Correct.
 4 Q. Okay. Under the square root sign in the
 5 formula you are supposed to start with the margin of
 6 error for black CVAP squared, which is represented by
 7 MOE parentheses X squared. Is that correct?
 8 A. That's right.
 9 Q. All right. Then you subtract the number that's
 10 calculated based on margin of error for total CVAP
 11 represented in the formula as MOE parentheses Y. Is
 12 that right?
 13 A. Correct.
 14 Q. Okay. Did your code correctly implement this
 15 formula?
 16 A. No.
 17 Q. All right. I'm going to mark as Exhibit 10.
 18 (Deposition Exhibit No. 10 marked for
 19 identification.)
 20 BY MS. THEODORE:
 21 Q. Let me know when you have this up?
 22 A. Okay.
 23 Q. Do you recognize this as a copy of the R code
 24 you turned over in this case?
 25 A. It looks like it.

1 Q. That's the code you used to calculate the
 2 margin of error for the black CVAP percentage for
 3 demonstration district 1 -- for demonstration district
 4 D1?
 5 A. Yes.
 6 Q. All right. Your code doesn't start with margin
 7 of error for the black CVAP squared and then subtract
 8 a number calculated based on the margin of error for
 9 total CVAP, does it?
 10 A. No, no. It has an error in it. Thankfully it
 11 doesn't change the ultimate conclusion, but it has an
 12 error in it.
 13 Q. You invert black CVAP and total CVAP, correct?
 14 A. That's one of the -- yeah. There's two errors
 15 in it, as I recall. But, yeah, that's one of them.
 16 Q. All right. So this error is replicated in all
 17 the code lines that you used to calculate margin of
 18 error for any of the demonstration districts using
 19 2020 or 2022 ACS numbers. Is that right?
 20 A. Yeah. That's right.
 21 Q. All right. So every margin of error number
 22 presented in your report is incorrect. Is that true?
 23 A. Certainly of the black estimates of CVAP. I
 24 don't know if there are any other ones in there, but,
 25 yeah, the error margin for the black estimates of CVAP

81

83

1 Q. Okay.
 2 A. I don't have any reason to dispute you on that.
 3 Q. You see the first line says, C/user/Sean T, et
 4 cetera?
 5 A. Yeah. This isn't the form that I produced it
 6 in, but it looks, like I said, it looks like what I
 7 produce. I don't have any reason to believe you would
 8 be less than forthcoming on it.
 9 I've just also done this enough to know
 10 when to leave a little wiggle room just in case and in
 11 the event that something went south, but I don't have
 12 a reason to dispute you. It looks like it.
 13 Q. Okay. This contains the code you used to
 14 calculate margin of error?
 15 A. That's right.
 16 Q. Let's go to page 10 of the PDF.
 17 A. (Witness complies.)
 18 Q. Let me know when you're there?
 19 A. All right.
 20 Q. In the middle do you see a line that starts
 21 with D1_CVAP mutate open parentheses MOE, and then
 22 continues?
 23 A. Yeah. We can call the parentheses greater than
 24 parentheses and then or pipe. But, yeah, D1_CVAP,
 25 then mutate MOE equals 1 over CVAP, et cetera.

1 are wrong.
 2 Q. Okay. So every error margin you calculate for
 3 the black CVAP percentage of the demonstration
 4 district is wrong and unreliable. Is that correct?
 5 MR. STRACH: Objection.
 6 A. It is wrong. Yeah.
 7 Q. Okay. Did you fail to understand how the
 8 margin of error formula worked when you wrote your
 9 code?
 10 A. No. I just coded it wrong.
 11 Q. Did you check your work?
 12 A. Yes.
 13 Q. You just didn't notice this error?
 14 A. Yes.
 15 Q. You agree this is a serious error?
 16 MR. STRACH: Objection.
 17 A. I mean, it certainly gives the wrong answer,
 18 but, like I said, it doesn't change the conclusions.
 19 Even if we use what Dr. Collingwood estimated these
 20 districts are all still -- we can't say that they are
 21 different than 50 percent. So it could have been a
 22 lot worse I suppose.
 23 Q. So Dr. Collingwood showed that this error had
 24 the effect of substantially increasing the margin of
 25 error. Do you agree with that?

82

84

21 (Pages 81 to 84)

1 A. I think it went from 1.8 -- or from 1.3 to 1.8.
 2 Q. All right. This wasn't the only mistake you
 3 made in calculating margin of error, was it?
 4 A. I'm not sure about that.
 5 Q. All right. Well, to implement the formula for
 6 calculating margin of error at the black CVAP
 7 proportion, you first need to calculate margin of
 8 error for the estimate of total black CVAP in the
 9 relevant region, correct?
 10 A. That's right.
 11 Q. That's the numerator in the black CVAP
 12 percentage point estimate?
 13 A. Yeah.
 14 Q. All right. You calculate that by adding up the
 15 estimates for black citizens in each of the three
 16 subcategories that are black alone, black and white in
 17 combination, and black and American Indian?
 18 A. Yes. I saw what Dr. Collingwood wrote about
 19 that. I didn't really investigate that closely,
 20 because it looks like that would have actually been an
 21 error in plaintiffs' favor. So I don't know if it is
 22 an error or not.
 23 At the end of the day I got to the end of
 24 it and saw that it was still within the error margin
 25 of 50 percent. So I'm content to use

1 Q. All right. See there's a formula on that page
 2 with the parentheses, with (1) next to it?
 3 A. Yes.
 4 Q. All right. That formula explains how to
 5 calculate the margin of error for an aggregated
 6 estimate of multiple components?
 7 A. It looks like it. I haven't looked at this in
 8 a while.
 9 Q. You looked at it when you were writing your
 10 report in this case, didn't you?
 11 A. Yeah.
 12 Q. Okay. Is that the formula you were attempting
 13 to use to calculate the margin of error for the
 14 combined count of the three subcategories of black
 15 citizens of voting age?
 16 A. I honestly don't remember. Like I said, I
 17 haven't looked into this issue Dr. Collingwood raised
 18 that much, because it resulted in an error in
 19 plaintiffs' favor, if there's an error.
 20 Q. You don't know whether this is the correct
 21 formula to use to calculate the margin of error for
 22 the black CVAP that's in the numerator of the black
 23 CVAP proportion?
 24 A. I think it is. This is a, what, nine page
 25 document full of formula.

85

87

1 Dr. Collingwood's estimates.
 2 Q. Well, Dr. Trende, we'll turn to
 3 Dr. Collingwood's estimate in a minute, but I just
 4 want to stick with your, the numbers in your report.
 5 You understand that -- so to calculate
 6 margin of error for the black CVAP estimate you have
 7 to combine margins of error for each of the three
 8 subgroups I mentioned, right?
 9 A. Yeah. Like I explained in my previous answer,
 10 I saw that in Dr. Collingwood's report, about the
 11 order in which you should be adding together the error
 12 margins of the individual subgroups, and I saw that
 13 when I did it it caused an error in plaintiffs' favor.
 14 So I didn't really investigate that much further. I
 15 didn't really investigate much of this that much
 16 further, because at the end of the day everything
 17 Dr. Collingwood estimated is consistent with my
 18 opinion in this case.
 19 Bottom line is I don't know that that's an
 20 error there.
 21 Q. Let's go to the ACS handbook that we previously
 22 were looking at, I think that was Exhibit 9. Can you
 23 go to page 59?
 24 A. (Witness complies.)
 25 Okay.

1 I know that one thing, that regarding
 2 formula 6 is an error, because I did look closely at
 3 that, because I was curious whether that was a mistake
 4 or not.
 5 I didn't look that closely into this one,
 6 because it made an error in plaintiffs' favor and was
 7 fairly small. At the end of the day everything worked
 8 out.
 9 Q. So you think this is the formula that you used,
 10 that you are supposed to use to calculate the margin of
 11 error for the black CVAP number that goes into the
 12 numerator, but you are not sure. Is that your
 13 testimony?
 14 A. Yes.
 15 Q. Okay. I want to turn to Exhibit 10, your peer
 16 script, go to page 5.
 17 A. (Witness complies.)
 18 Okay.
 19 Q. Okay. You see in the middle of the page
 20 there's a line that says, "CVAP_block_total_MOE equals
 21 SQRT parentheses, and then it continues?
 22 A. Yes.
 23 Q. All right. Is that the line in your code where
 24 you were calculating the margin of error for the black
 25 CVAP number that goes in the numerator of the black

86

88

22 (Pages 85 to 88)

<p>1 CVAP proportion?</p> <p>2 A. I honestly don't remember. It is 28 lines of</p> <p>3 code.</p> <p>4 Q. Can you point to anywhere else in this code</p> <p>5 where you are calculating the margin of error for the</p> <p>6 black CVAP total that goes in the numerator of the</p> <p>7 black CVAP proportion?</p> <p>8 A. Certainly not as I sit here.</p> <p>9 Q. All right. You see that the code we were just</p> <p>10 looking at, it squares CVAP_black_MOE, you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It doesn't square CVAP_black_white_MOE,</p> <p>13 correct?</p> <p>14 A. That's right.</p> <p>15 Q. It doesn't square CVAP_NA_black_MOE, correct?</p> <p>16 A. That's right.</p> <p>17 Q. All right. Do those categories correspond to</p> <p>18 the three categories we were discussing before of</p> <p>19 black CVAP, or people who are black or white -- I'm</p> <p>20 sorry. Let me start again.</p> <p>21 Do those categories correspond to the</p> <p>22 three categories we were discussing before that go</p> <p>23 into the black CVAP calculation?</p> <p>24 A. Yes.</p> <p>25 Q. All right.</p>	<p>1 A. Certainly larger.</p> <p>2 Q. All right. All your margin of error</p> <p>3 calculations were based on the block groups that you</p> <p>4 conclude were contained in whole or in part in</p> <p>5 Mr. Esselstyn's demonstration districts B and D,</p> <p>6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. How did you determine which block groups were</p> <p>9 contained in whole or in part in the demonstration</p> <p>10 districts?</p> <p>11 A. That is through the R code.</p> <p>12 Q. Is that a function called ST Intersect?</p> <p>13 A. I believe so, yes.</p> <p>14 Q. What does that function do?</p> <p>15 A. It looks at the block groups that intersect the</p> <p>16 map and prints them out.</p> <p>17 Q. Okay. Are you aware that that function</p> <p>18 ST Intersect select block groups that border a</p> <p>19 particular region, but are not necessarily actually</p> <p>20 contained in the region?</p> <p>21 A. I don't know.</p> <p>22 Q. You don't know if that's true today?</p> <p>23 A. I don't know if that's true today.</p> <p>24 Q. Okay. Did you check the block groups produced</p> <p>25 by the ST Intersect function to make sure that they</p>
<p>89</p> <p>1 A. It is black alone, part black, part white, part</p> <p>2 Native American, part black.</p> <p>3 Q. All right. Any reason you can think of why it</p> <p>4 would be appropriate to square the margin of error for</p> <p>5 black alone, but not the margin of error for part</p> <p>6 black part white or part black part Native American?</p> <p>7 A. I don't remember. Like I said, this was a</p> <p>8 while ago.</p> <p>9 Q. Okay. So sitting here today, you are not</p> <p>10 disputing Dr. Collingwood's conclusion that you</p> <p>11 implemented this part of the formula incorrectly also,</p> <p>12 right?</p> <p>13 A. No. Like I testified, I looked at it, I saw</p> <p>14 that it resulted in error in plaintiffs' favor, didn't</p> <p>15 change the ultimate answer. That one I didn't dig in</p> <p>16 to much.</p> <p>17 Q. All right. The error, the first mistake that</p> <p>18 we discussed caused an error in defendants' favor.</p> <p>19 Isn't that right?</p> <p>20 A. That's right.</p> <p>21 Q. All right. The size of that error in</p> <p>22 defendants' favor dwarfed the size of the error in</p> <p>23 plaintiffs' favor caused by the second error. Isn't</p> <p>24 that right?</p> <p>25 MR. STRACH: Objection.</p>	<p>91</p> <p>1 were actually contained in demonstration districts B</p> <p>2 and D?</p> <p>3 A. I mean, there's nothing to check it against.</p> <p>4 If Mr. Esselstyn had produced a block assignment file</p> <p>5 or block equivalency file, I could have done that, but</p> <p>6 he didn't, and so you are reliant upon the geometries</p> <p>7 that are estimated by the computer.</p> <p>8 Q. Your testimony is that it's not possible to</p> <p>9 open up a shapefile and check to see what block groups</p> <p>10 are in that shapefile?</p> <p>11 A. Well, when you have a map that splits block</p> <p>12 groups, you can't just eyeball that and see if there's</p> <p>13 differences, because there might be just slight bits</p> <p>14 of overlap or a single block. It's much easier to do</p> <p>15 this with block assignment files than shapefiles.</p> <p>16 Q. Is your testimony that you couldn't have opened</p> <p>17 up a shapefile in Maptitude or another redistricting</p> <p>18 software and checked to see which block groups were</p> <p>19 contained in the demonstration districts?</p> <p>20 A. My testimony is that having the shapefile from</p> <p>21 Mr. Esselstyn, I ran it through the code in R, and</p> <p>22 these are the block groups that R identified as being</p> <p>23 in the district, and I don't know any reason not to</p> <p>24 rely upon R's process.</p> <p>25 Q. Could you have opened up the shapefiles in</p>

<p>1 Maptitude or other redistricting software to check to 2 see which block groups were in the districts? 3 A. Perhaps to double-check it, I guess I could 4 have done that. 5 Q. You didn't? 6 A. But I didn't have a reason not to trust R's 7 approach to it. 8 Q. You didn't open up the shapefiles to 9 double-check? 10 A. I didn't double-check in a separate program, 11 no. 12 Q. Okay. When you used ST Intersect, you didn't 13 know whether it identified block groups in the 14 district or block groups that were adjoining the 15 district? 16 A. That border the district, that's right. If 17 there's overlap between the boundaries or if it's the 18 result of a block being read in from one place to 19 another, I don't know. 20 Q. Okay. Did you ever ask counsel to ask for a 21 block equivalency file from Mr. Esselstyn? 22 A. No. 23 Q. All right. Have you reviewed the portion of 24 Dr. Collingwood's report where he looks at your code 25 and reports that you included block groups that are</p>	<p>1 those groups to the demonstration districts? 2 A. I don't dispute it. I haven't checked. 3 Q. Okay. You don't dispute that they are not in 4 the demonstration districts? 5 A. I don't dispute it one way or the other. 6 Q. All right. You didn't think it was important 7 to go back and check to see whether your calculation 8 of the block groups was accurate after a question was 9 raised about it by another expert? 10 A. I looked to see what his bottom line was and if 11 it changed my ultimate conclusion that I'd be 12 testifying to, and it didn't. So as of this 13 deposition I haven't gone back and double-checked it. 14 I don't know if my testimony is going to 15 be that block group 371399606001 is in the district or 16 not, but I certainly wouldn't represent anything to 17 the Court that was incorrect. 18 Q. You are suggesting you might go and check after 19 this deposition? 20 A. I might check it after the deposition. 21 Q. You've had a month since you received 22 Dr. Collingwood's report, right? 23 A. That is true. 24 Q. Okay. You haven't seen fit to check that in 25 the last month?</p>
<p>93</p> <p>1 entirely outside of demonstration districts B and D? 2 A. I did. 3 Q. Do you dispute that conclusion? 4 A. I don't dispute it one way or the other. 5 Q. You haven't gone back to check whether you were 6 correct? 7 A. No. 8 Q. All right. Mark this as Exhibit 11. 9 (Deposition Exhibit No. 11 marked for 10 identification.) 11 BY MS. THEODORE: 12 Q. Let me know when you have it open? 13 A. Can I get a hard copy? 14 Okay. 15 Q. Do you recognize this as a copy of 16 Dr. Collingwood's rebuttal report in this case? 17 A. Yes. 18 Q. All right. Let's go to page 11. 19 A. (Witness complies.) 20 Okay. 21 Q. All right. Dr. Collingwood's report lists two 22 specific block groups that your code assigns to the 23 demonstration districts. Do you see that? 24 A. Yes. 25 Q. Okay. Do you agree that your code assigns</p>	<p>95</p> <p>1 A. I haven't checked it in the last month. 2 Dr. Collingwood has already demonstrated 3 an error in my code, so I won't be testifying that the 4 error margin is whatever it was reported in the code, 5 which to me sort of reduced the urgency of checking 6 other things that are smaller errors. Once I saw 7 Dr. Collingwood's estimated error margins are still, 8 would still render the district within 50 percent plus 9 1, and so my ultimate testimony wouldn't be changed, 10 that sort of reduced the fire alarm on some of these 11 other issues. 12 If there hadn't been an error in formula 13 6, I probably would have gone back and checked some of 14 these other issues a little bit more closely. 15 Q. Okay. 16 A. I imagine if I rerun my code, R is going to 17 identify block groups 371399606001 and 371399607012 as 18 being within the district. 19 Q. Let's turn to page 23 and 24 of your report. 20 A. (Witness complies.) 21 Q. Start with page 23. Are you there? 22 A. Yes. 23 Q. Okay. What you are doing -- you see the 24 sentence that says, "the total estimated CVAP for the 25 block groups in the district D-1 is 169225?"</p>

<p>1 A. 169225, yes.</p> <p>2 Q. Thanks for that correction.</p> <p>3 You see it says the total estimated black</p> <p>4 CVAP for the block groups in district D-1 is 83,992?</p> <p>5 A. Yes.</p> <p>6 Q. All right. So this isn't a margin of error</p> <p>7 calculation, correct?</p> <p>8 A. Correct.</p> <p>9 Q. You are just totaling the black CVAP and CVAP</p> <p>10 for the block groups in demonstration districts B</p> <p>11 and D. Is that right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Those calculations were performed in R</p> <p>14 using the same script that we marked as Exhibit 10?</p> <p>15 A. Oh yeah. Using the same script as Exhibit 10,</p> <p>16 right.</p> <p>17 Q. Okay. If the block groups that your R code</p> <p>18 assigned to demonstration districts B and D are</p> <p>19 incorrect, then that number is incorrect, isn't it?</p> <p>20 A. Yeah. I think Mr. Esselstyn gives his own</p> <p>21 estimate of the 2022 BCVAP for the district that still</p> <p>22 remains, I think D-1. So I think it was pretty much</p> <p>23 the same as what I had.</p> <p>24 But I think, if I recall correctly, I</p> <p>25 calculated this using the disaggregated block data</p>	<p>1 Q. All right. You reviewed this report?</p> <p>2 A. Yes.</p> <p>3 Q. Can you turn to page 18?</p> <p>4 A. (Witness complies.)</p> <p>5 Okay.</p> <p>6 Q. All right. Do you see there in paragraph 35</p> <p>7 Mr. Esselstyn states that the numbers you provided for</p> <p>8 the total estimated CVAP for the block groups in</p> <p>9 district B-1 and the total estimated black CVAP for</p> <p>10 block groups in district D-1?</p> <p>11 A. I see that, yes.</p> <p>12 Q. All right. So he says that your numbers are</p> <p>13 wrong, doesn't he?</p> <p>14 A. He does.</p> <p>15 Q. You haven't gone back and checked to confirm</p> <p>16 whether they are right or wrong?</p> <p>17 A. No.</p> <p>18 Q. Okay. All right. We have already established</p> <p>19 that this plus or minus 2.1 percent number on page 23</p> <p>20 is wrong, correct?</p> <p>21 A. That's right.</p> <p>22 Q. The number is incorrect?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. All right. Then on page 24, you</p> <p>25 calculate the black CVAP proportion for the block</p>
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<p>1 from -- the disaggregated block data from</p> <p>2 redistricting data hub, but I'm not sure.</p> <p>3 Q. Well, you would have calculated this using</p> <p>4 disaggregated block data for block groups that you</p> <p>5 assigned to district D-1, correct?</p> <p>6 A. Yeah, so there's two different ways that this</p> <p>7 stuff -- I think I did, I looked at the blocks that</p> <p>8 were specifically assigned to the district and using</p> <p>9 the redistricting data hub data you can look only at</p> <p>10 those blocks that are assigned.</p> <p>11 But I honestly don't remember. I don't</p> <p>12 remember this specific issue being raised by</p> <p>13 Dr. Collingwood, so I just can't say anything about it</p> <p>14 as I sit here.</p> <p>15 Q. This specific -- this specific issue was raised</p> <p>16 by Mr. Esselstyn, wasn't it?</p> <p>17 A. I don't remember that.</p> <p>18 Q. Okay. I'm going to transmit what I'm going to</p> <p>19 mark as Exhibit 12.</p> <p>20 (Deposition Exhibit No. 12 marked for</p> <p>21 identification.)</p> <p>22 BY MS. THEODORE:</p> <p>23 Q. Do you recognize this as a copy of</p> <p>24 Mr. Esselstyn's rebuttal report?</p> <p>25 A. Yes.</p>	<p>1 groups in district D-1 using 2020 and 2022 ACS data.</p> <p>2 Is that correct?</p> <p>3 A. On page -- wait, I'm looking on his report. 24</p> <p>4 of my report or his?</p> <p>5 Q. Yours.</p> <p>6 A. Okay. Yes.</p> <p>7 Q. All right. You understand Mr. Esselstyn states</p> <p>8 that your calculations are incorrect?</p> <p>9 A. He might. I don't remember that.</p> <p>10 Q. Why don't you flip back to his report and look</p> <p>11 at paragraph 36?</p> <p>12 A. (Witness complies.)</p> <p>13 Okay.</p> <p>14 Q. He states that the numbers that you calculate</p> <p>15 for the black CVAP percentage of the block groups in</p> <p>16 his district D-1 are incorrect, doesn't he?</p> <p>17 A. Yes.</p> <p>18 Q. Have you gone back to see whether your numbers</p> <p>19 are correct?</p> <p>20 A. No.</p> <p>21 Q. Okay. You have no basis to dispute his</p> <p>22 conclusion that your numbers are incorrect?</p> <p>23 A. I don't have a basis to evaluate it one way or</p> <p>24 the other, no.</p> <p>25 Q. Okay. Looking at the paragraph on page 24 in</p>
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25 (Pages 97 to 100)

1 your report using 2022 CVAP data -- are you there?
 2 A. Yes.
 3 Q. Can you say with confidence sitting here today
 4 that any of the numbers you report in that paragraph
 5 are correct?
 6 A. I thought there was some place in
 7 Mr. Esselstyn's report where he talked about the CVAP
 8 estimate for the district itself, I thought we lined
 9 up, but maybe not. I don't know.
 10 Let's see. He says on page 7 of his
 11 report that the 2022 black CVAP for demonstration
 12 district D is 50.14 percent, which is what I report
 13 there.
 14 Q. Okay. Other than the 50.14 percent number in
 15 that paragraph that lines up with Mr. Esselstyn's
 16 report, can you say with confidence that any other
 17 number reported in the paragraph starting using 2022
 18 CVAP data is accurate?
 19 A. Well, I know that the error margins are not
 20 right, but the 50.14 percent is a big deal since
 21 that's our estimate of the black CVAP for the
 22 district.
 23 Q. I'll ask again: Other than the 50.14 number,
 24 can you say with confidence that any of the other
 25 numbers you report in the paragraph starting using

1 Q. Okay. So midway through the paragraph you say
 2 that Mr. Esselstyn's report in black CVAP is
 3 50.19 percent. Do you see that?
 4 A. Yes.
 5 Q. Other than that number, can you say with
 6 confidence that any of the numbers you provide in this
 7 paragraph are correct?
 8 A. Other than 50.19 percent?
 9 Q. Yes.
 10 A. (Witness reviewing document.)
 11 The numbers are not correct, but the
 12 conclusion that claim overall estimated black CVAP
 13 percent for the district is above 50 percent is
 14 dependent on the error rate for the method, et cetera,
 15 we are in agreement on that.
 16 Q. So putting aside your failure to use the
 17 correct formula, you chose to calculate the margin of
 18 error of the demonstration districts by combining the
 19 margins of error of all of the block groups that you
 20 believed were in demonstration districts B and D. Is
 21 that correct?
 22 A. That's right. As Dr. Collingwood said, it is
 23 impossible to calculate the actual error margin for
 24 the districts.
 25 Q. All right. Margins of error at the block group

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1 2022 CVAP data are accurate?
 2 A. I'll answer again, I know the error margins are
 3 incorrect, which by my read are the other numbers
 4 here. That 50.14 percent number is very important,
 5 since that's the actual estimate for the black CVAP
 6 percent of the district. We both agree using 2022
 7 data that it is 50.14 percent.
 8 Q. Okay. The final sentence of this paragraph
 9 says, starts "for 2020 the block groups do have an
 10 estimated BCVAP above 50 percent (50.2 percent) but
 11 for 2020 they do not, parentheses (49.5 percent)."
 12 Do you see that?
 13 A. Yes.
 14 Q. Can you say with confidence that those numbers
 15 are correct?
 16 A. The specific numbers are not correct, but the
 17 actual conclusion that for 2020 the block groups do
 18 not have an estimated BCVAP above 50 percent, but for
 19 2020 they do not, we are in agreement on that.
 20 Q. Okay. Let's go back to page 23 of your report,
 21 sorry to skip around. I want to focus on this
 22 paragraph that starts at the bottom of 23, crosses
 23 over to 24, starts "even using 2020 data."
 24 Are you with me?
 25 A. Yes.

1 level are going to be higher generally than margins of
 2 error at the county level. Is that correct?
 3 A. Not necessarily. I'm sorry, you mean of an
 4 individual block group? Yeah. Generally speaking the
 5 error margin of an individual block group will be
 6 higher than the error margin of a county.
 7 Q. Okay. The majority of the population in
 8 districts, demonstration districts B and D would have
 9 been whole counties, correct?
 10 A. That's right.
 11 Q. All right. Because districts B and D only
 12 split one county?
 13 A. That's my recollection.
 14 Q. All right. Census Bureau directly reports
 15 margin of error at the county level. Isn't that
 16 correct?
 17 A. That's correct.
 18 Q. You could have used the margins of error that
 19 the Census Bureau reported directly at the county
 20 level for purposes of counting the, calculating the
 21 margin of error for the majority of demonstration
 22 districts B and D. Isn't that correct?
 23 A. Yeah. I actually thought of this one.
 24 Q. Then you could have combined the calculation at
 25 the county level with calculations at the block group

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26 (Pages 101 to 104)

1 level for the portions of the demonstration districts
 2 that contained only a partial county. Is that
 3 correct?
 4 A. Yeah.
 5 Q. You considered calculating the margin of error
 6 in that way?
 7 A. Yeah. I just said that one I actually thought
 8 about.
 9 Q. Okay. Wouldn't that have been a more accurate
 10 way of calculating margin of error?
 11 A. So I don't know. The reason I didn't do it
 12 that way was I looked at the ACS handbook, I didn't
 13 see anything instructing to do it that way. I wasn't
 14 sure about mixing and matching different levels of
 15 Census subdivisions. So I did it aggregating the
 16 block groups, so it was only the block group level.
 17 Q. Talking about chapter 8 of the ACS handbook?
 18 A. Right. I might have missed it, but I didn't
 19 see anything in there saying to always use the largest
 20 subdivision available.
 21 Q. Okay. In your view is there something in the
 22 ACS handbook that suggests that it would be
 23 inappropriate to combine margins of error at the
 24 county level with margins of error at the block group
 25 level?

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1 A. Oh, no. No. I did it keeping the same groups
 2 across. And I genuinely meant what I said, I was
 3 looking for a citation, I'm kind of curious about
 4 this, but I didn't see anything in Dr. Collingwood's
 5 report saying this is the way you have to do it,
 6 either.
 7 So at the end of the day it doesn't change
 8 the ultimate answer, which is that 50 percent is
 9 within the error margin. So I only spent but so much
 10 time digging on this, but I never found there was an
 11 answer.
 12 Q. Okay. Let's turn to Dr. Collingwood's rebuttal
 13 report. Let's turn to page 13.
 14 A. (Witness complies.)
 15 Q. Are you with me?
 16 A. Yes.
 17 Q. Okay. You see Dr. Collingwood's rebuttal table
 18 2?
 19 A. Yes.
 20 Q. You reviewed this table?
 21 A. Yes.
 22 Q. Did you identify any errors in the analysis
 23 that Dr. Collingwood engaged in to produce this table?
 24 A. I didn't look one way or the other.
 25 Q. So sitting here today you haven't identified

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1 A. No. I didn't see guidance either way on that.
 2 Q. Okay. Is there some mathematical reason why it
 3 would be inappropriate to combine data at the county
 4 level with data at the block group level?
 5 MR. STRACH: Objection.
 6 Go ahead.
 7 A. No. I would just want to see some type of
 8 citation or something saying that that's definitely
 9 the way you have to do it.
 10 Q. Is there a citation -- well, step back.
 11 So you chose to aggregate all block
 12 groups, right?
 13 A. Yes.
 14 Q. All right. Is there a citation saying that
 15 that's the way it should be done?
 16 A. No. I think my testimony has been I don't see
 17 a citation either way. So I decided to do it keeping
 18 consistent Census levels across what I aggregated
 19 from.
 20 Q. All right. Let's pull up Dr. Collingwood's
 21 rebuttal report.
 22 Let me ask you this, actually. Did you
 23 ever engage in a calculation of margin of error using
 24 the method of combining margins of error for counties
 25 with margins of error for block groups?

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1 any errors?
 2 A. I didn't look one way or the other.
 3 Q. I'm just asking, sitting here today you have
 4 not identified any errors?
 5 A. My answer is still I didn't look one way or the
 6 other.
 7 I think when you ask an expert if they
 8 identified error, it has implicit in it a suggestion
 9 that the expert looked. And so I want to clarify that
 10 I didn't look one way or the other. I don't know if
 11 there are errors in it. But I'm not going to validate
 12 the data, either.
 13 Q. You are not going to offer an opinion that
 14 there were errors in the approach that Dr. Collingwood
 15 used to produce this table, are you?
 16 A. As I sit here, I don't have an opinion one way
 17 or the other. Like I said, I haven't looked at it.
 18 Q. All right. So Dr. Collingwood shows in this
 19 table that if you -- well, let's take a step back. So
 20 you agree that you can use the margins of error
 21 directly reported by the Census Bureau at the county
 22 level to calculate a margin of error for the black
 23 CVAP proportion of each county, correct?
 24 A. Well, I think what I said was this is something
 25 I considered and looked and didn't find guidance one

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1 way or the other. I thought the safest way to proceed
 2 was to use the same levels across the board. So I
 3 don't agree or disagree one way or the other.
 4 Q. With the way Dr. Collingwood calculated margin
 5 of error?
 6 A. I don't know if there's a reason to do it or
 7 not. I figured you would be safe using the same
 8 Census level across the board in calculating from
 9 there, rather than mixing up or mixing and matching
 10 Census levels. I don't know one way or the other if
 11 that's acceptable or not.
 12 Q. Why would mixing and matching Census levels
 13 matter for the equation that we looked at from chapter
 14 8 of the handbook?
 15 A. Oh, gosh, I don't know. But as we have gone
 16 through the weeds here, we have seen all sorts of
 17 pitfalls that can pop up using this Census data. So
 18 it's one of those unknown unknowns that made me
 19 nervous when I was doing this.
 20 Q. Is the Census level an input into the margin of
 21 error?
 22 A. I don't see it, but, like I said, I wasn't
 23 comfortable putting different levels of Census data in
 24 for calculating the error margin. I thought it would
 25 be safer to use the same level across the board.

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1 geographically?
 2 A. No.
 3 Q. Okay. So when you are combining block groups
 4 you are combining geographic regions that are of a
 5 different physical area, correct?
 6 A. Yes.
 7 Q. And when you are combining block groups, you
 8 are combining geographic regions that have different
 9 populations, correct?
 10 A. Correct.
 11 Q. Okay. So stepping away from the question of
 12 combining different geographic regions for a moment, I
 13 just want to ask you a basic question about Census
 14 Bureau's calculation of margins of error at the county
 15 level.
 16 So you agree the Census Bureau directly
 17 reports margins of error at the county level for black
 18 CVAP and total CVAP, correct?
 19 A. Correct.
 20 Q. And you use those margins of error to directly
 21 calculate margin of error for black CVAP proportion,
 22 correct?
 23 A. Correct.
 24 Q. Okay. So, in other words, the black CVAP
 25 percentage margin of error at each county -- let me

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1 I haven't seen any instruction one way or
 2 another in the Census data. There's no citation in
 3 Dr. Collingwood's work, so I can't say one way or
 4 another that it is safe to use what Dr. Collingwood
 5 does. I'm not disputing it, either. I just don't
 6 know.
 7 Q. The margin of error formula doesn't know that a
 8 particular region is a block group, correct?
 9 A. No.
 10 Q. Can you think of any reason why it would be
 11 appropriate to combine a block group with another
 12 block group, but not combine a block group with a
 13 county for purposes of the margin of error formula?
 14 MR. STRACH: Objection.
 15 A. You can ask me this as many ways as you want,
 16 but the answer is going to be the same. I don't know
 17 one way or another.
 18 The whole point is that there's a lot of
 19 pitfalls in the Census data and it seems safe to me to
 20 use the same level across the board. I don't see any
 21 citation one way or the other suggesting you ought not
 22 do it that way.
 23 Q. Okay.
 24 A. I don't know.
 25 Q. Are all block groups the same size

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1 start again.
 2 In other words, the black CVAP percentage
 3 margin of error for each county is known?
 4 A. Yes.
 5 Q. Okay. Dr. Collingwood in his rebuttal table 2
 6 shows that your method of combining block groups if
 7 applied at the county level would produce margins of
 8 error that are significantly higher than the known
 9 black CVAP percentage margin of error reported by
 10 Census Bureau at the county level. Isn't that true?
 11 A. That's what it suggests, yeah.
 12 Q. You have no reason to dispute that?
 13 A. I don't.
 14 Q. Okay. So, for example, his rebuttal table 2
 15 shows under your method of combining block groups, you
 16 would get a margin of error for the black CVAP
 17 percentage in Bertie County of plus or minus 4.4
 18 percentage points after adjusting for your coding
 19 errors. Is that right?
 20 A. I think that's right.
 21 Q. Okay. The Census Bureau directly reports a
 22 margin of error of plus or minus .72 percent. Is that
 23 right?
 24 A. Right.
 25 Q. Okay. For every single county that

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28 (Pages 109 to 112)

1 Dr. Collingwood analyzed in rebuttal table 2, you get
 2 the same result that your method of combining block
 3 groups produces margins of error that are higher than
 4 the margins of error directly reported for counties by
 5 the Census Bureau. Is that correct?
 6 A. Well, that's right.
 7 Q. Okay. Doesn't that suggest to you that your
 8 method for calculating margins of error inflates the
 9 margin of error?
 10 A. Well, I don't know. This is a nice example of
 11 what I was kind of suggesting about unknown unknowns
 12 before. I think on a spatial level if I suggested
 13 calculating everything from the block group level to
 14 keep things consistent across your levels of
 15 estimation, spatially there wouldn't be anything wrong
 16 with that. Dr. Collingwood suggests this as a
 17 potential shortcoming.
 18 I don't know if there are shortcomings
 19 going the other direction, using county level
 20 groupings to estimate things and then combining with
 21 block group groupings. I just don't know. We are
 22 both estimating from reported Census data.
 23 Q. All right. Let's flip to the --
 24 A. If we are going to a new topic, can I suggest
 25 lunch? I think ours is probably getting cold.

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1 his rebuttal table 2 is that if you sum the margins of
 2 error for each individual block group you will get a
 3 higher margin of error than you would get for the
 4 entire region containing those block groups. Is that
 5 true?
 6 MR. STRACH: Objection.

7 A. You will get a larger error margin in these
 8 counties that he investigates than summing the block
 9 groups. I don't know how far that generalizes.
 10 Q. You mean you get a larger margin of error by
 11 summing the block groups than you do if you take the
 12 margin of error for the county containing the block
 13 groups?
 14 MR. STRACH: Objection.

15 A. For the counties he looks at. Again, this
 16 transcript follows me. I don't know if this is a
 17 generalizable principle that he's identified or not.
 18 That's true of the 10 counties he looks at.

19 Q. One of the counties he looks at is Pasquotank
 20 County, right?

21 A. Yes.
 22 Q. Okay. So if you add up the margin of error for
 23 the block groups in a portion of Pasquotank County,
 24 you are likely to get a higher margin of error than
 25 the true margin of error for that portion of

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1 Q. Sure. We're sort of related, but this is a
 2 fine place to break.
 3 A. I don't have a problem wrapping up.
 4 Q. Probably have about half a page more questions
 5 on sort of a related topic. Totally up to you?
 6 A. That's fine. I've just been informed reliably
 7 by counsel that Panera is running slow today, so it is
 8 actually not getting cold.
 9 Q. Okay. All right.
 10 Let's flip to page 33 of your report.
 11 A. (Witness complies.)
 12 Q. Do you have an understanding of whether the
 13 majority of the population of Pasquotank County falls
 14 in Mr. Esselstyn's demonstration districts rather than
 15 the adjoining district?
 16 A. I don't, but I would suspect it's the majority.
 17 Q. Okay. Do you agree that the actual margin of
 18 error for the black CVAP proportion of a region
 19 containing, say, 20 block groups will be lower than
 20 the margin of error you get if you were to sum the
 21 margins of error for each of those 20 block groups?
 22 MR. STRACH: Objection.
 23 A. I have no idea what you just asked. I'm sorry.
 24 Q. Okay. Well, let me try to rephrase.
 25 So what Dr. Collingwood demonstrates in

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1 Pasquotank County. Is that true?
 2 MR. STRACH: Objection.
 3 A. No. Neither Dr. Collingwood, nor I can make
 4 that claim.

5 Inflated variance could come from a part
 6 outside the district. We just don't know. I should
 7 say any inflated variance could come from outside the
 8 district, we just don't know.

9 Q. So you're saying it is possible that the
 10 inflated variance of the margin of error is entirely
 11 attributable to block groups that are outside of the
 12 demonstration district?

13 MR. STRACH: Objection.
 14 Go ahead.

15 A. Yeah, I'm saying we don't know. Any inflated
 16 variance could be attributable to the part that's
 17 outside the district.

18 Q. Any reason to think that would be the case?
 19 MR. STRACH: Objection.

20 A. No. We don't know means we don't know. We
 21 just don't know where any inflated variance is coming
 22 from.

23 We have a sample of 10 counties that he's
 24 looked at of the 3,000 plus in the United States, so I
 25 don't know if this is like a generalized issue or

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29 (Pages 113 to 116)

1 something that is very specific to this portion of
 2 North Carolina, or within this portion of North
 3 Carolina, if it is, you know, a rural versus urban
 4 thing. I just don't know.
 5 So, no, we can't make that claim. I don't
 6 think Dr. Collingwood makes it either, unless I missed
 7 it. I might have.
 8 Q. So you don't think you can infer a general
 9 principle from this rebuttal table 2 that if you sum
 10 up margins of error for subgroups within a region, the
 11 margin of error is likely to be higher than for the
 12 region itself?
 13 MR. STRACH: Objection.
 14 Go ahead.
 15 A. I don't know. You certainly can't do it on the
 16 basis of 10 counties.
 17 Q. Okay.
 18 A. We're ultimately all estimating the final
 19 variance. I don't know if the estimation formula is
 20 conservative or not.
 21 Q. Can you look at page 18 of your report?
 22 A. (Witness complies.)
 23 Q. You say on page 18: "However, because the
 24 population of the district is smaller than the
 25 population for all the block groups in the district

1 margin of the district and generally speaking error
 2 margins are related to the population. The
 3 traditional formula for the error margin is whatever
 4 your Z statistic is times the square root of the
 5 variance over the number of observations. So as you
 6 pull people out, that denominator gets smaller and
 7 your error margin increases.
 8 But it is possible that as you pull people
 9 out, you are altering the numerator as well, because
 10 the variance will change enough. It is possible I
 11 suppose that it changes enough to offset the changes
 12 in numerator, which is why I leave that wiggle room
 13 there.
 14 But generally speaking error margins are a
 15 function of the number of people in your sample.
 16 Q. Okay. The number of people in the sample is
 17 different than the population of the block group.
 18 Isn't that true?
 19 A. Well, no, because here the CVAP, we are talking
 20 about the CVAP and that is something that's estimated.
 21 It is your N.
 22 Q. Right. But the error margins, when you say
 23 error margin are inversely related to population, you
 24 mean the error margins are inversely related to the
 25 number of responses for that particular block group in

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1 and because error margins are inversely related to
 2 population, the actual error margin for the district
 3 will likely be somewhat larger."
 4 Do you see that?
 5 A. Yes.
 6 Q. You have no way to know whether that's true, do
 7 you?
 8 A. No.
 9 Q. Okay.
 10 A. But the only reason that I don't have a way to
 11 know that, it is generally true that as you eliminate
 12 observations, your error margins grow.
 13 There's a little slight caveat in there
 14 that it is related to the variance.
 15 Now, for proportion, that's different,
 16 because the variance is the proportion. But when you
 17 are doing count data, you need to know the variance of
 18 the count data. So it is possible that as you
 19 eliminate population expanding the error margins, you
 20 have made a change to the variance as well that
 21 counteracts that change.
 22 Q. I just want to -- did you look at error margins
 23 for block groups in Pasquotank County to verify that
 24 the error margins are inversely related to population?
 25 A. Well, here we are talking about the error

1 the ACS survey, don't you?
 2 A. Well, right. But it is important to remember
 3 that in the ACS, that's an estimate as well. That's
 4 why we are sitting here. So when we are talking in
 5 the context of CVAP, population that we are talking
 6 about is all being estimated. The N is an estimate.
 7 That's part of why you get this complicated formula
 8 for the error margins, because both your denominator
 9 and numerator are estimates.
 10 Q. I just want to understand the statement you
 11 make on page 18. You say: "However, because the
 12 population of the district is smaller than the
 13 populations for all the block groups in the district
 14 and because error margins are inversely related to
 15 population, the actual error margin for the district
 16 will likely be somewhat larger."

17 And you didn't do anything to verify that
 18 the error margins for block groups in Pasquotank
 19 County are inversely related to the population of
 20 block groups in Pasquotank County, did you?
 21 MR. STRACH: Objection.
 22 Go ahead.
 23 A. Yeah, I think I've answered this a couple
 24 different ways. I think I understand getting hung up
 25 on the term population, which normally when we are

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30 (Pages 117 to 120)

1 doing this stuff we are talking about the Decennial
 2 Census numbers.
 3 We are not talking about Decennial Census
 4 numbers now. We are talking about ACS data here. The
 5 population through the ACS data, the number of
 6 citizens, which is our denominator, is itself
 7 estimated, which is part of why you have this
 8 complicated formula for the error margins.
 9 I think that's where we're getting hung up
 10 is mixing and matching population as reported by the
 11 Decennial Census with population as reported by the
 12 CVAP.
 13 Q. I just want to know what work did you do to
 14 verify the statement that error margins are inversely
 15 related to population in block groups in Pasquotank
 16 County?
 17 A. Because error margins are inversely related to
 18 population. The number of people in your sample is
 19 part of the denominator of the error margin
 20 calculation.
 21 Q. Can you go to rebuttal table 3 on page 15 of
 22 Dr. Collingwood's rebuttal report?
 23 A. Okay.
 24 Q. You understand that this is a table that
 25 calculates margin of error for black CVAP percentage

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1 A. Yes.
 2 Q. Okay. So the first block group has a lower
 3 population than the second block group. Is that
 4 right?
 5 A. Lower estimated population, yes.
 6 Q. Okay. It also has a lower estimated margin of
 7 error. Is that true?
 8 A. Yes.
 9 Q. Okay. So that's inconsistent with your
 10 conclusion that error margins are inversely related to
 11 population for the block groups in Pasquotank County,
 12 isn't it?
 13 MR. STRACH: Objection.
 14 A. No, because they are inversely related.
 15 There's also a numerator, which is the variance, which
 16 is why I don't say conclusively that the error margins
 17 will be smaller. I just say likely.
 18 Q. The numerator is black CVAP, right?
 19 A. It is the variance, I think.
 20 Q. What's the variance?
 21 A. It's the spread of the data. How far from the
 22 mean the data tend to be.
 23 Q. You are saying the variance is the numerator in
 24 what proportion?
 25 A. When the Census is calculating the error

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1 using data at the county level and then data at the
 2 block group level for Pasquotank, because Pasquotank
 3 is split. Is that right?
 4 A. Correct.
 5 Q. Okay. Do you see the block groups listed near
 6 this table?
 7 A. Yes.
 8 Q. All right. You see the first block group has a
 9 total CVAP population of 890 people?
 10 A. Let me bring this up on my computer screen.
 11 I'm not trying to filibuster. I can
 12 actually increase the size on my computer.
 13 All right. This is much better. Okay.
 14 Where are we?
 15 Q. You see the first block group listed in this
 16 table has a total CVAP of 890 people?
 17 A. That's estimate, yes.
 18 Q. Okay. The second block group listed has a
 19 total CVAP estimate of 965 people?
 20 A. That's right.
 21 Q. Okay. Do you see that the margin of error for
 22 CVAP for that second block group is 305?
 23 A. Yes.
 24 Q. Margin of error for the CVAP for the first
 25 block group is 174?

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1 margins for -- well, so let's go straight to formula
 2 6. You have, the margin of error for \hat{p} is $1/\sqrt{Y}$. So that's the fraction for total population is on
 3 the bottom. And then it is the margin of error for,
 4 that's squared for \hat{x} minus the point estimate
 5 squared, which is fraction times the margin of error
 6 for \hat{y} squared. So those error margins are related
 7 to variance.
 8 Now, if we had chapter 7 I think,
 9 generally speaking the error margin for count data is
 10 your Z statistic times the square root of the variance
 11 over the number of observations. So when you're using
 12 count data, it's a twofold, there's two parts to it.
 13 There is your number of observations, estimate of
 14 CVAP, and then the variance. So what's happening here
 15 is some of those block groups probably have a greater
 16 variance, which is why they have the larger error
 17 margins.
 18 Q. All right. I want to look at the third block
 19 group you see that is listed, the third block group in
 20 rebuttal table 3 has a black CVAP of 525. Do you see
 21 that?
 22 A. Yes.
 23 Q. Okay. Do you see that the margin of error for
 24 the black CVAP proportion is 237.45?
 25

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1 A. Yes.
 2 Q. All right. Next block group has a black CVAP
 3 of 290. Do you see that?
 4 A. Yes.
 5 Q. The margin of error for the black CVAP estimate
 6 is 219.45?
 7 A. Yes.
 8 Q. All right. So, again, here a block group in
 9 Pasquotank County with a lower black CVAP has a lower
 10 margin of error than the block group with the higher
 11 black CVAP. Isn't that true?
 12 A. Yeah, probably has lower variance --
 13 Q. Okay.
 14 A. -- which is going to happen as you approach
 15 zero, too. I mean, there's no way that the district
 16 with N of 40 is going to have a variance of 700, for
 17 obvious reasons.
 18 Q. Okay. So these error margins are not inversely
 19 related to population, correct?
 20 A. Error margins are inversely related to
 21 population. But there's also a denominator in there
 22 that can overwhelm the change in the number of
 23 observations, which is why I say likely. I don't say
 24 definitely.
 25 Q. The error margins that we just looked at in

1 variances than the portions that are outside the
 2 demonstration districts, correct?
 3 A. No. None of us can do that. It is impossible,
 4 because only the Census has those individual responses
 5 that you can calculate variances from.
 6 Q. Okay.
 7 MS. THEODORE: This is a good place to
 8 break for lunch.
 9 (Recess taken.)
 10 BY MS. THEODORE:
 11 Q. So before we move off Dr. Collingwood, we were
 12 talking about rebuttal table 2. I just want to ask
 13 you more generally: Do you have a basis to dispute
 14 any of the data or analysis in Dr. Collingwood's
 15 rebuttal report?
 16 MR. STRACH: Objection.
 17 A. Well, I mean, there's -- I think I testified
 18 early on that I didn't read the whole thing, so -- or
 19 I didn't pay close attention to the whole thing. I
 20 know there's part of it responding to another expert,
 21 Dr. Alford that I didn't read at all.
 22 But I think generally speaking I agree
 23 with his data.
 24 Q. Are you disputing any conclusion in his
 25 rebuttal report?

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1 rebuttal table 3 are not inversely related to
 2 population, are they?
 3 A. Yes, they are. They just have a denominator as
 4 well that is the variance, which overwhelms the effect
 5 of the number of observations.
 6 But the formula for error margins has the
 7 number of observations in the denominator, which is
 8 why they are inversely related. There are other
 9 effects that can overwhelm that, though, like an
 10 increase in the variance.
 11 Q. If a portion of a block group that is excluded
 12 from a demonstration district has fewer responses on
 13 the American Community Survey than the portion of the
 14 block group that is included in the demonstration
 15 district, the true margin of error for the included
 16 portion might actually be lower than the margin of
 17 error for the entire block group. Is that true?
 18 MR. STRACH: Objection.
 19 A. Depending on what happens with the variance of
 20 the remaining portion. Generally speaking, no. But
 21 if the portion that remains has a much lower variance,
 22 you could end up with a lower error margin.
 23 Q. Okay. And you didn't do any work in this case
 24 to determine whether the portions of block groups that
 25 are in the demonstration districts have lower

1 A. Well, like I said, I don't really know one way
 2 or another on the, calculating the error margin from
 3 counties versus block groups. I'm not saying that to
 4 be disruptive or ornery. I'm saying I really don't
 5 know. I'm actually kind of curious and would love to
 6 see citation on that.
 7 But, no. Generally speaking I think we
 8 are on the same page.
 9 Q. Okay.
 10 A. I guess -- well, looking through it, he has a
 11 dot plot analysis.
 12 Q. Dr. Trende, we are going to get to that. Why
 13 don't we just say excluding the dot plot analysis, are
 14 you disputing any conclusion in Dr. Collingwood's
 15 report?
 16 A. Yeah, I think we are generally on the same
 17 page. Can I just say I'm incorporating by reference
 18 whatever the answers are to Mr. Esselstyn's dot plot
 19 analysis to Dr. Collingwood?
 20 Q. You can say whatever you like, Dr. Trende.
 21 All right. Let's move on. What is a
 22 normal distribution?
 23 A. Do you want the definition of probability
 24 density function? Or, as I recall, it is one over the
 25 square root of two pie times the standard deviation,

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32 (Pages 125 to 128)

1 exponentiated negative X minus mu squared over 2
 2 variance, I think.
 3 Q. Okay. When the Census Bureau is calculating a
 4 margin of error for a black CVAP proportion, that
 5 margin of error is based on a normal distribution. Is
 6 that correct?
 7 A. Yeah. I think that's right. I certainly
 8 recognize the formula from that.
 9 Q. Okay.
 10 A. I don't think I've ever seen them actually come
 11 out and say that, but maybe they do.
 12 Q. In a normal distribution 50 percent of the
 13 values are higher than the point estimate and
 14 50 percent of the values are lower than the point
 15 estimate. Is that true?
 16 A. Yes.
 17 Q. Okay. So if a point estimate is above
 18 50 percent, is it true as a statistical matter that is
 19 more likely than not that the true value of the --
 20 I'll start again.
 21 If the point estimate for black CVAP is
 22 above 50 percent, isn't it true as a statistical
 23 matter that it is more likely than not that the true
 24 value of the black CVAP is above 50 percent?
 25 MR. STRACH: Objection.

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1 A. No.
 2 Q. Why not?
 3 A. Because what's normally distributed are the
 4 responses around the true population value, not the
 5 true population value around the responses. If we
 6 took 100 polls, those polls would be normally
 7 distributed around the true population values. So if
 8 the Census, if the Census repeated this 100 times, the
 9 BCVAP estimates would be normally distributed around
 10 the true population value. It's a common mistake.
 11 Q. Okay.
 12 MS. THEODORE: Can you read back that
 13 explanation, Mr. Bailey?
 14 (The record was read back as requested.)
 15 BY MS. THEODORE:
 16 Q. So you are saying if the Census repeated the
 17 ACS 100 times, 50 percent of those values would be
 18 above the point estimate?
 19 A. No. In expectation, which is an important
 20 caveat, 50 percent of those poll values would be above
 21 the true population value. So 50 percent of the -- if
 22 you took 100 polls in expectation, 50 point estimates
 23 would be above the true population value, and 50 point
 24 estimates would be below the true population value.
 25 That's why something like the RealClear

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1 Politics averages work, because we get multiple polls
 2 and it can give us a better view of what the true
 3 population value is by estimating -- by averaging
 4 those point estimates. Or 538, if you prefer them.
 5 Q. All right. To put this in more concrete terms,
 6 if the point estimate is 50.5, and you assume a normal
 7 distribution for margin of error, if you did 100 runs
 8 of the ACS survey, 50 of those runs would be above
 9 what number?
 10 A. The true population. If the true population
 11 were 50.5, and you ran the ACS 100 times in
 12 expectation, 50 of those poll results would be above
 13 50.5; 50 of those poll results would be below it.
 14 If true population were 49.5 percent, and
 15 you run the ACS 100 times, 50 percent of those poll
 16 results would be above 49.5 percent, 50 percent will
 17 be below.
 18 You are making -- this line of inquiry is
 19 making the classic mistake of frequentism, which is
 20 assuming that the -- you are trying to make statements
 21 about the likelihood of the true population value and
 22 you're not. You're making statements about the
 23 likelihood of getting this type of result, given a
 24 certain population value.
 25 All the error margin means is that if you

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1 repeat -- all a 90 percent confidence interval means
 2 is if you repeated the poll 100 times, 90 percent of
 3 those error margins would contain the true population
 4 value somewhere within them. We don't know where and
 5 we can't say where is more likely than not within
 6 those confidence levels.
 7 The answer that it gives you some idea
 8 about the likelihood or the probability of a true
 9 population value is one of those failure statistic
 10 comps answers.
 11 Q. So with respect to a point estimate that's 50.5
 12 let's say, and let's suppose that the margin of error
 13 at the 90 percent confidence interval is .4, what
 14 statistical statement do you make there about the
 15 likelihood that the true value is above 50 percent?
 16 A. I can say we have -- oh, that it's above 50
 17 percent? If we are going to accept 90 percent
 18 confidence, P value of .1 as sufficient, then you
 19 would say you have, these data are sufficiently
 20 inconsistent with the true population value being
 21 50 percent, that we would reject that possibility and
 22 accept the hypothesis that it is higher.
 23 Or you could say, you know, 90 percent of
 24 the time, since 90 percent of the time that confidence
 25 interval is going to include the true population

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1 value, we can have a pretty high degree of confidence
 2 that the true population value is somewhere between
 3 50.1 and 50.9.
 4 Q. Okay. You say on page 24, footnote 9 of your
 5 report that "most social science journals still
 6 require 95 percent confidence to support a claim."
 7 Do you see that?
 8 A. Yes.
 9 Q. What work did you do to support the conclusion
 10 that most social science journals require 95 percent
 11 confidence?
 12 A. I'm sorry, which footnote are we in?
 13 Q. You know what I may --
 14 A. This is what I get for trusting the lawyers.
 15 Q. It is the last sentence of footnote 9, page 24.
 16 A. Okay. Yeah, most social science results that I
 17 see reported are to 95 percent confidence. So
 18 sometimes you will see them reported to 90 percent as
 19 a finding, but it is generally 95 percent.
 20 Q. This is just based on your review of articles
 21 in social science journals, you have seen a lot that,
 22 where numbers are reported at 95 percent?
 23 A. It is my experience. I mean, as someone who
 24 has been through grad school fairly recently and
 25 watched a lot of people trying to get results

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1 Mr. Esselstyn complies with those redistricting
 2 criteria, correct?
 3 A. Yeah, I think that's right.
 4 Q. Okay. Similarly, your report doesn't offer any
 5 opinion as to whether any demonstration map drawn by
 6 Mr. Esselstyn complies with the redistricting
 7 criteria?
 8 A. That's right.
 9 Q. Okay. You don't dispute that every
 10 demonstration district drawn by Mr. Esselstyn is as
 11 compact or more compact than the enacted Senate
 12 districts 1 and 2, correct?
 13 A. I haven't looked at it one way or the other, so
 14 I don't dispute it or affirm it.
 15 Q. Okay. Similarly, you don't dispute that every
 16 demonstration map drawn by Mr. Esselstyn is as compact
 17 or more compact than the enacted 2023 Senate map,
 18 correct?
 19 A. I haven't looked at it one way or the other, so
 20 I don't dispute it or not dispute it.
 21 Q. You are not offering any opinions about
 22 compactness in this case, are you?
 23 A. I don't believe so.
 24 Q. Okay. Your report doesn't offer any opinion
 25 about whether any of Mr. Esselstyn's demonstration

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1 published, and submitted stuff myself, you are going
 2 for 95 percent confidence. But sometimes you can get
 3 stuff published with 90 percent. I'm not really aware
 4 of results being published below that, but maybe they
 5 exist somewhere.
 6 Q. You didn't do any sort of quantitative analysis
 7 to conclude that most social science journals require
 8 95 percent?
 9 A. No. It is based on my experience.
 10 Q. Okay. You reviewed demonstration districts A
 11 through D described in Mr. Esselstyn's initial report?
 12 A. Correct.
 13 Q. You agree that demonstration district A and C
 14 are majority black districts?
 15 A. I think that's right, yes, because they cross
 16 the ballot threshold.
 17 Q. Okay. Are you aware that the North Carolina
 18 legislature announced a set of redistricting criteria
 19 when it drew the new legislative maps in 2023?
 20 A. Yes.
 21 Q. Okay. Your report doesn't cite those criteria
 22 or rely on them. Is that correct?
 23 A. Correct.
 24 Q. Okay. So your report doesn't offer any opinion
 25 as to whether any demonstration district drawn by

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1 districts are reasonably configured, correct?
 2 A. I don't know if that's in there or not. I
 3 don't think so.
 4 Q. Okay.
 5 A. Reasonably configure is like a legal term of
 6 art. There might be things that relate to that as a
 7 legal term of art, but in my mind, no.
 8 Q. Okay. Same with the maps, your report doesn't
 9 offer any opinion as to whether any demonstration map
 10 is reasonably configured. Is that correct?
 11 A. Yes. It's the same answer. Reasonably
 12 configure is a legal term of art. So I don't know how
 13 opinions I offer might relate to it, but in my mind,
 14 no.
 15 Q. Did you review Mr. Esselstyn's demonstration
 16 district E in his rebuttal report?
 17 A. No.
 18 Q. So you haven't formed any opinions about
 19 demonstration district E?
 20 A. I have not.
 21 Q. All right. On page 25 you discuss
 22 Mr. Esselstyn's demonstration district A, correct?
 23 A. Yes.
 24 Q. All right. You say, "because every county in
 25 the district has at least 2,364 black residents of

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1 voting age, all counties in the map are required to
 2 achieve a majority black district."
 3 Did I read that correctly?
 4 A. Yeah, that one probably could have been
 5 wordsmithed a little better, but yes.
 6 Q. What did you mean by that sentence?
 7 A. I didn't mean that was the only configuration
 8 in the region that could possibly be done. I meant
 9 that you had to look at the black population in every
 10 one of the counties within the district as drawn to
 11 get to 50 percent plus 1.
 12 So this dates back to my testimony in the
 13 Nairne case where I used something called the moment
 14 of inertia approach, and in that case I used it
 15 because there were districts that were drawn up to
 16 like 58 percent BVAP. And so you could make a case,
 17 looking at the distribution of the entire black
 18 population was unfair, because there might be a small
 19 concentrated version in the city that would get you to
 20 50 percent plus 1.
 21 So all I'm trying to say here is that for
 22 these districts as constituted, pretty much every
 23 black individual in the districts are needed to get to
 24 50 percent plus 1.
 25 Q. Demonstration district A has a BVAP of

1 residents, for purposes of population compactness you
 2 would only have to look at the black population in
 3 Vance County, because on its own that population is
 4 sufficient to be 50 percent plus 1 of the voting age
 5 population in that district as a whole. So I think it
 6 would be unfair to plaintiffs to look at the
 7 distribution across Vance and Bertie Counties.
 8 Q. Okay.
 9 A. But that's not the case here. The black
 10 population that gets you to 50 percent plus 1 is
 11 necessarily spread across all of these counties.
 12 Q. All right. You are not offering a moment of
 13 inertia analysis in this case, correct?
 14 A. No.
 15 Q. All right. Okay. Then you say later in the
 16 same paragraph that "if counties were to split, which
 17 I understand to violate the Stephenson Rule, only
 18 three precincts at the eastern end of Washington
 19 County could be removed while maintaining a BVAP of
 20 50 percent or two precincts at the western tip of
 21 Vance County could be removed."
 22 Did I read that correctly?
 23 A. Correct.
 24 Q. All right. What work did you do to reach the
 25 conclusion that those were the only precincts that

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1 51.47 percent?
 2 A. Right.
 3 Q. Your view is that every, pretty much every
 4 black person is needed to get above 50 percent plus 1?
 5 A. You can exclude from your analysis I guess
 6 440 -- I'm sorry, that's not right -- 1240, give or
 7 take. And since every county has at least 2,364
 8 residents, black residents of voting age, you need
 9 some population from every county.
 10 I guess what I'm saying is if this
 11 district were 70 percent BVAP, let's say, you wouldn't
 12 necessarily have to look at the whole county to
 13 identify the black population that is sufficient to
 14 constitute 50 percent plus 1. You know, you might
 15 say, well, you only need the black population within
 16 this district in one county to reach that threshold.
 17 But that's not the case here.
 18 Q. Okay. It is also true that you couldn't delete
 19 one of these counties while still meeting the total
 20 population threshold, correct?
 21 A. Right. What I'm saying -- well, let's try this
 22 a different way. If every black resident of the
 23 county, except maybe 20, let's say you had 20 black
 24 residents in Bertie County, everyone else is in Vance
 25 County, and then the other counties had zero black

1 could be removed?
 2 A. Well, again, if you are looking at the, if you
 3 are thinking of this in terms of population
 4 compactness, which is what I'm thinking in terms of,
 5 you way, okay, could things be snipped off of either
 6 end -- I suppose there's black populations that could
 7 be snipped out of the center, which doesn't really
 8 make the black population more compact. So I just
 9 looked at the precincts in the two counties at the
 10 ends and looked to see how many precincts could be
 11 removed before the black population fell below
 12 50 percent.
 13 Q. All right. Let's turn to page 60 of
 14 Mr. Esselstyn's rebuttal report, which I believe we
 15 marked as Exhibit 12.
 16 A. (Witness complies.)
 17 Page what?
 18 Q. Sorry. Page 60 of the PDF. Are you looking at
 19 a hard copy?
 20 A. Yeah, but I can bring up the PDF.
 21 Okay.
 22 Q. You see he demonstrates here that precincts
 23 could be removed from Hertford County without dropping
 24 the BVAP in demonstration district A below 50 percent?
 25 A. Yeah. Like I said, that doesn't help the

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35 (Pages 137 to 140)

1 population compactness. I was just looking at the
 2 ones at the ends.
 3 Q. You see he also shows that a precinct could be
 4 removed from Bertie County without dropping the BVAP
 5 in demonstration district A below 50 percent?
 6 A. Like I said, that doesn't help the population
 7 compactness, because you're taking a chunk out of the
 8 middle of the district. That's why I only looked at
 9 the ends.
 10 Q. Your testimony is that Hertford County is in
 11 the middle of the district?
 12 A. Compared to Washington or Vance, yes.
 13 Q. Okay. I just want to sort of focus on the
 14 sentence you wrote. You say, "if counties were to be
 15 split only three precincts at the eastern end of
 16 Washington County could be removed while maintaining a
 17 BVAP of 50 percent or two precincts at the western tip
 18 of Vance County could be removed."
 19 Is that statement accurate?
 20 A. I'm writing in the context of population
 21 analysis. So, yeah, I probably could have wordsmithed
 22 it better to be clearer, but in context, yes, it is
 23 right.
 24 Q. In context, and the context is?
 25 A. Analysis of the distribution of the population.

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1 towards the center. You are going to make population
 2 more compact by removing it from one of the extremes
 3 and that is Vance or Washington County here.
 4 Q. Your testimony is that it wouldn't be possible
 5 to make this distribution more compact by removing
 6 black population from Hertford County?
 7 A. No.
 8 MR. STRACH: Objection.
 9 A. I think there might be also, you know, I
 10 understand that there is a kind of fundamental
 11 disagreement in these cases between plaintiffs and
 12 defendants about whether the, whether Gingles requires
 13 a compact district and whether that is independent of
 14 the compactness of the population of the district.
 15 I understand defendants here to be arguing
 16 that what really matters is the compactness of the
 17 population of the district, which is a separate
 18 inquiry. So you would make the district less compact
 19 by removing that chunk from Bertie, I'm sure, because
 20 you would fill less of the minimum balance circle and
 21 perimeter would increase. But you also would make the
 22 population less compact, because you are removing a
 23 chunk of the population near the district centroid.
 24 The way you would make the population more compact
 25 would be by removing it from the extremes, which here

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1 Q. All right. Can you -- what would you have to
 2 add to that sentence to make it accurate?
 3 A. I think it is accurate in the broader context.
 4 I'd make it more precise by probably adding a sentence
 5 earlier explaining a little better what's going on
 6 with the population compactness. Maybe a paragraph
 7 about the work in Nairne that I'm trying to
 8 distinguish from.
 9 Q. Are you trying to say that these are the only
 10 two options if you wanted to make the county -- the
 11 district more compact?
 12 A. No.
 13 Q. So can you explain what you are saying about
 14 compactness? I'm struggling to understand the context
 15 that you say is missing?
 16 A. I'm not sure how much clearer I can be. I
 17 admit it is not wordsmithed as well it could. It
 18 could probably use a little more explication about the
 19 context, which is that this is talking about the
 20 distribution of black voters within the county.
 21 And, yes, suppose it is true you could
 22 remove black population from Halifax County even,
 23 right in the center, and maybe drop the BVAP below
 24 50 percent. But that doesn't make your black
 25 population any more compact, because you are taking it

1 would be Vance or Washington County.
 2 Q. Okay. As written it is not true that the only
 3 way to maintain a BVAP of 50 percent in demonstration
 4 map A is to remove the three districts in Washington
 5 or the two districts in Vance, correct?
 6 A. No. I still don't agree with that, because
 7 this is in the context of discussions of the
 8 population. It could have been made more clear I
 9 admit with a little bit of better explication
 10 beforehand. And I can understand the source of
 11 confusion.
 12 Q. Okay. Because this sentence says nothing about
 13 the context of compactness, correct?
 14 A. That sentence does not say compactness, but
 15 that's the lawyerly thing of taking a sentence and
 16 ignoring the rest of the area, the rest of the section
 17 which focuses on population.
 18 Q. Okay. The word compactness doesn't appear
 19 anywhere in the paragraph containing that sentence,
 20 does it?
 21 A. No, but it's in a section dedicated to talking
 22 about population, so I stand by this sentence.
 23 Q. All right.
 24 A. If I had to do it over, I would write the
 25 paragraph a little clearer.

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1 Q. Have you looked at the transcript of
 2 Mr. Esselstyn's deposition in this case?
 3 A. No.
 4 Q. He was asked a question in which counsel
 5 suggested that some of your dot density plots or your
 6 choropleth plots have been relied on by the U.S.
 7 Supreme Court. Is it your view that the U.S. Supreme
 8 Court has relied on your dot density plots or
 9 choropleth plots in prior cases?
 10 A. I don't know.
 11 Q. Okay. Sitting here today you can't identify a
 12 case from the U.S. Supreme Court that has relied on
 13 your dot density plots or choropleth plots?
 14 A. I honestly don't know.
 15 Q. I am asking if you can identify a U.S. Supreme
 16 Court case that has relied on your plots?
 17 A. I know exactly what you are asking me. My
 18 answer is I don't know.
 19 Q. So you can't identify one?
 20 MR. STRACH: Objection.
 21 Answer it again.
 22 A. My answer is still the same answer. I don't
 23 know.
 24 Q. Do you know of any 4th Circuit case that has
 25 relied on any of the dot density plots or choropleth

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1 BVAP data loaded in?
 2 A. No. No. Open Street Map is just for the
 3 background map. I thought I should acknowledge that
 4 part.
 5 Q. Okay. Can anybody contribute to Open Street
 6 Map?
 7 A. Yeah. That's my understanding.
 8 Q. Sort of like Wikipedia for maps?
 9 A. I don't know about that, but Wikipedia does get
 10 a lot of stuff right. I don't see any suggestion that
 11 the underlying map is somehow wrong here.
 12 Q. Okay. Did you do anything to verify who
 13 contributed to, who created this map, any of the Open
 14 Street Map maps that you use?
 15 A. No. If it had like New York City in the middle
 16 of North Carolina, I wouldn't use it. But I have some
 17 familiarity with the geography of North Carolina,
 18 which reflects this map and so I certainly don't see a
 19 reason not to trust it, at least at this level.
 20 Q. Okay.
 21 A. If someone wants to suggest I-95 takes a
 22 different route or the Albemarle Sound is located
 23 elsewhere, you know, then I guess there's an error,
 24 but I don't think there is.
 25 Q. All right. The key on the right says that the

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1 plots that you use in this case?
 2 A. No. Maybe I should be more vain and keep up to
 3 date on when courts rely on my stuff, but I really
 4 don't know.
 5 Q. Has any court to your knowledge relied on your
 6 choropleth plots or dot density plots?
 7 MR. STRACH: Objection.
 8 A. I mean, it is the same thing. I really don't
 9 keep a tally of courts that rely on them or that don't
 10 rely on them. I don't know one way or the other.
 11 Q. Okay. All right. Let's go to figure 8 on page
 12 27. That's an example of one of your choropleth maps?
 13 A. Yes.
 14 Q. All right. How did you draw this map?
 15 A. In R.
 16 Q. Okay. I see the legend copyright Open Street
 17 Map contributors at the bottom of this choropleth map?
 18 A. Yes.
 19 Q. What does that reflect?
 20 A. The underlying map, the street map.
 21 Q. Okay. So you took the street map from Open
 22 Street Map and then you used R to shade the blocks
 23 based on BVAP. Is that accurate?
 24 A. Yes.
 25 Q. Okay. So Open Street Map data, does that have

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1 color yellow represents a Census block that is
 2 30 percent BVAP. Is that correct?
 3 A. That's -- remember I round up, but yes. Just
 4 like Mr. Esselstyn truncates his maps, I truncate mine
 5 at 30 percent to 70 percent.
 6 Q. Okay. So what color is a Census block that is
 7 25 percent BVAP?
 8 A. I should also before we go down this route,
 9 just put out that I'm color blind. So if we get into
 10 things that are greenish, I might give the wrong
 11 answer.
 12 But 25 percent would be shaded as what I
 13 take to be yellow.
 14 Q. Okay. So yellow represents Census block that
 15 is between zero and 30 percent?
 16 A. Yes.
 17 Q. Okay. And would a Census block that is
 18 32 percent BVAP be rounded down to 30 percent?
 19 A. It would fall within that bin. So it is not
 20 that it is rounded. Just like if -- everyone who
 21 uses choropleth maps, it's potentially one of the
 22 downsides of it, has to be bin the data. You have to
 23 decide how you're going to bin it.
 24 Q. Anything in the 30 to 35 percent range is going
 25 to show up as what color?

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1 A. Yellow.
 2 Q. So yellow color then is zero to 35 percent
 3 BVAP?
 4 A. Right. I guess you could say that it is
 5 rounded down is a way to look at it. But, yeah,
 6 that's that bin.
 7 Q. And then the next bin under it would be
 8 35 percent to 39.9 percent. Is that right?
 9 A. Yeah.
 10 Q. Then the bin under that would be 40 percent to
 11 44.99 percent?
 12 A. Yeah, I think that's right.
 13 Q. Okay. Is there anywhere where you explain this
 14 in the report?
 15 A. I thought I did, but it might not be in there.
 16 I guess that's why we do the deposition, right.
 17 Q. Okay. Can you find anywhere where you explain
 18 that in the report right now?
 19 A. No. I said I thought it was in there, but it
 20 might not be. That's why it's good to have a chance
 21 to clarify things.
 22 Q. It isn't in there, is it?
 23 A. I think I said I don't know.
 24 Q. Okay. Do you see there are areas in figure 8
 25 that are shaded white?

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1 Q. So this map, for example, allows you to
 2 distinguish between a precinct -- well, sorry, a
 3 precinct or a block that is 50 percent BVAP versus 55
 4 percent BVAP, correct?
 5 A. If I weren't color blind it probably would,
 6 yes.
 7 Q. Fair enough. But it wouldn't allow you to
 8 distinguish between a block or precinct that's
 9 75 percent BVAP versus 90 percent BVAP, correct?
 10 A. Correct.
 11 Q. Okay. You know, assuming that the population
 12 is equal, the difference between 70 percent and the
 13 95 percent is likely to have a greater impact on the
 14 overall BVAP percentage of the district. Isn't that
 15 true?
 16 A. It would have a greater impact, yeah.
 17 Q. Okay. What's the purpose of these choropleth
 18 maps in your view?
 19 A. I was asked to create them.
 20 Q. Do you draw any conclusions about demonstration
 21 district A in this report on the basis of your
 22 choropleth maps of demonstration district A?
 23 A. I was asked to create choropleth maps for
 24 demonstration district A and I created them.
 25 Q. Okay. I didn't see any conclusions in your

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1 A. Yeah. Those are empty blocks.
 2 Q. Blocks with no population?
 3 A. Yeah.
 4 Q. All right. The answers that you just gave with
 5 the coloring and key for figure 8, are those
 6 applicable to all the other choropleth maps in the
 7 report?
 8 A. Yes. They all use the same rates. They all
 9 fill in empty spots as white.
 10 Q. Okay. You say on page 27 that "these color
 11 scales on these maps are truncated at 30 percent and
 12 70 percent BVAP. In my experience allowing the color
 13 scale to run from 0 percent to 100 percent risks
 14 losing a good deal of data and differences in the
 15 crucial 40 percent to 60 percent BVAP rate are blended
 16 together."
 17 Did I read that right?
 18 A. Yes.
 19 Q. Why do you describe the 40 percent to 60
 20 percent BVAP range as crucial?
 21 A. Because that's where when -- that's where you
 22 are at the like flipping from majority BVAP precinct
 23 to minority BVAP precinct. I think that data is more
 24 interesting than the difference between a 0 percent
 25 BVAP precinct and 10 percent BVAP precinct.

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1 report about demonstration district A based on these
 2 maps. Am I wrong about that?
 3 A. I don't know that there's direct conclusions
 4 based upon these choropleths, but I was asked to
 5 create them, so I created them.
 6 Q. Okay. With respect to the approach of
 7 truncating the maps at 30 percent and 70 percent, you
 8 say on page 27, "this approach has been accepted in
 9 many courts in which I have testified and has never
 10 been challenged by a court."
 11 Do you see that?
 12 A. Yes.
 13 Q. Okay. Are you aware of any court that has
 14 considered and rejected criticism that your map
 15 truncated data at 30 percent and 70 percent?
 16 A. I don't know.
 17 Q. Okay. On page 28, I want to turn to page 28
 18 where you discuss demonstration district B.
 19 A. Okay.
 20 Q. Okay. You state that it has 77,699 black
 21 residents of voting age, correct?
 22 A. 77,599.
 23 Q. Sorry. Yes, you are right. Okay. Then --
 24 A. We all make mistakes.
 25 Q. Then you say over 11,000 of those black

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1 residents live at the top of the arm of the district
 2 that extends into and splits Pasquotank County to take
 3 in Elizabeth City."
 4 Did I read that right?
 5 A. Yes.
 6 Q. All right. What area are you describing when
 7 you say the top of the arm?
 8 A. I don't remember if that includes Gates County
 9 or not. I didn't look into this too closely, because
 10 I understand Mr. Esselstyn withdrew map B.
 11 Q. So I'm just asking you about your initial
 12 report, you made this statement. When you made the
 13 statement in your initial report, what did you mean
 14 when you said top of the arm?
 15 A. Well -- and I just explained it may have
 16 included Gates County in there as well. I don't
 17 really remember, because I haven't looked into it that
 18 closely. My understanding is Mr. Esselstyn withdrew
 19 district B. So it seemed like a waste of client money
 20 to really dig down into stuff that's B specific.
 21 Q. How did you calculate this 11,000 number in
 22 your initial report?
 23 A. Again, I honestly don't remember.
 24 Q. Do you think top of the arm is a term that you
 25 can define with reasonable scientific certainty?

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1 Q. What do you mean by "largely"?
 2 A. You may have other considerations, but the
 3 split, especially in the Elizabeth City area, follows
 4 along the racial contours of that area, incorporating
 5 all the high BVAP and excluding the whitest portions
 6 of the district.
 7 Q. This is based on your dot density map in figure
 8 17?
 9 A. No. It is the concluding section for the
 10 sentence -- concluding sentence for the section, so it
 11 is summarizing the analysis that precedes it.
 12 Q. Are you aware that demonstration district B's
 13 boundary largely tracks the boundary of Elizabeth
 14 City?
 15 A. Yes.
 16 Q. Okay. Do you know what percentage of
 17 Pasquotank County's black voting age population lives
 18 in Elizabeth City?
 19 A. No.
 20 Q. Are you aware that most of Pasquotank County's
 21 black voting age population lives in Elizabeth City?
 22 MR. STRACH: Objection.
 23 A. No.
 24 Q. You don't know one way or the other?
 25 A. I would assume that it does looking at the

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1 A. I think it, if I dug into the code enough and
 2 looked at it I probably could. But as I understand
 3 it, this district is no longer live, so I didn't
 4 really dig into Mr. Esselstyn's rebuttal on this.
 5 Q. So your representation is that your code
 6 calculates this 11,000 figure?
 7 A. I'd have to look into it. That's what I
 8 assume. But, like I said, I haven't. And since my
 9 understanding is district B-1 isn't a live district
 10 right now, I doubt if I will.
 11 Q. Sitting here today you can't tell me whether
 12 the top of the arm refers to just Pasquotank County,
 13 or Pasquotank County and all of Gates County, or
 14 Pasquotank County and some portion of Gates County?
 15 A. That's right.
 16 Q. All right. I want to turn to page 34.
 17 A. (Witness complies.)
 18 Q. You say here: "This county split which barely
 19 raises the BVAP of the district above 50 percent
 20 appears to largely made on a racial basis."
 21 Do you see that?
 22 A. Yes.
 23 Q. You are referring to split of Pasquotank County
 24 and demonstration district B?
 25 A. Yes.

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1 choropleth maps, but I don't know for sure.
 2 Q. All right. So if you wanted to preserve most
 3 of Elizabeth City in one district, the effect of that
 4 would be to place most of Pasquotank's black residents
 5 in the district that contains Elizabeth City. Is that
 6 correct?
 7 MR. STRACH: Objection.
 8 A. Well, there is no district that contains
 9 Elizabeth City since he splits, introduces a split of
 10 Elizabeth City. But, yeah, I mean, whichever -- if
 11 you are going to split Pasquotank County, you are
 12 going to split Elizabeth City, then whichever district
 13 gets most of Elizabeth City is probably going to get
 14 most of the black population.
 15 Q. Did you investigate whether there were other
 16 alternative designs of demonstration district B that
 17 would have placed a higher percentage of Pasquotank's
 18 black population in the demonstration district?
 19 A. No.
 20 Q. Okay. Looking at your figure 17, isn't it true
 21 that there are highly blue areas right outside the
 22 boundaries of demonstration district B that are
 23 instead left in demonstration district B-2?
 24 A. Like where?
 25 Q. Well, like in the middle, you don't see any

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1 blue areas that are just adjoining the black
 2 boundaries surrounding Elizabeth City, but aren't in
 3 demonstration district B-1?
 4 A. Of course there's going to be one on this map,
 5 which is showing one dot as being one person. That
 6 doesn't mean that it is highly blue. Actually, most
 7 of the clusters that I see to the extent they exist
 8 are away from the boundary, but maybe a little bit to
 9 the kind of southwest of the district.
 10 But then when you look at the map where a
 11 dot is 10 residents, it doesn't really show up. So
 12 that's probably just over plotting.
 13 Q. You don't see any -- let's turn to figure 60
 14 and that's your map where the dots are 10 residents?
 15 A. Yes.
 16 Q. You don't see blue dots that are right near
 17 boundaries of district 1, demonstration district 1 --
 18 but aren't included in demonstration district B-1?
 19 A. I see blue dots. I know he's not getting the
 20 entire black population of Pasquotank County in there.
 21 But, no, I don't see anything equivalent
 22 to some of the other clusters that he includes in
 23 there. But I guess that's a judgment call.
 24 Q. You don't assert in your report that any
 25 demonstration district was drawn predominantly on the

1 Do you see that?
 2 A. Yes.
 3 Q. All right. Mr. Esselstyn could have excluded
 4 that block and raised the black population in his
 5 demonstration district, couldn't he have?
 6 A. I don't know if he could have with keeping
 7 equal population in continuity in mind. You have to
 8 make up that population elsewhere.
 9 Q. You don't offer any opinion in this case that
 10 race predominated over compactness in drawing
 11 demonstration district B, correct?
 12 A. I think I answered that that I don't offer an
 13 opinion on predominance in general. I just say that
 14 district lines follow -- the splits appear to be made
 15 on racial basis. I don't like testifying to
 16 predominance if I don't have to.
 17 Q. All right. Do you agree that if it's possible
 18 to draw a district with a higher minority population
 19 that would do less well on criteria like compactness
 20 or preserving municipalities, that would be a signal
 21 that the district with the lower minority population
 22 was not drawn primarily on the basis of race?
 23 MR. STRACH: Objection.
 24 A. Not necessarily. Just because you could be
 25 more egregious doesn't mean what you have done is not

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1 basis of race, do you?
 2 A. I mean, that's a legal finding, so no. I just
 3 say it looks like split was made largely on racial
 4 basis.
 5 I really dislike testifying to the
 6 ultimate question, but sometimes you have to, I guess.
 7 Q. Let's go to figure 14.
 8 A. (Witness complies.)
 9 Q. It looks to me based on your map that there's a
 10 block that's between I guess 70 percent and
 11 100 percent BVAP that's just outside the border of
 12 district B-1. Do you see that?
 13 A. I guess this is the joys of a Zoom deposition,
 14 but I assume you are -- if you look at the way that
 15 Elizabeth City is split, so district 1 comes into
 16 Pasquotank County kind of going through on the borders
 17 of that uninhabited area. Then it kind of zigzags
 18 back around Elizabeth City and there's that little arm
 19 there. And then, yeah, to the, like -- that's what I
 20 was referring to on the dot density map, to the south
 21 and west of that arm it looks like maybe there's
 22 certainly a block of high BVAP that isn't included.
 23 Q. All right. In sort of the northwest portion of
 24 the district you see that there are blocks included --
 25 like that green area that's less than 50 percent BVAP.

1 egregious.
 2 Q. Okay. Is it your view that if a demonstration
 3 district splits a county or municipality to achieve a
 4 50 percent plus 1 black population, that means that
 5 race necessarily predominated in drawing the district?
 6 MR. STRACH: Objection.
 7 A. I'll confess post *Allen v. Milligan* I am even
 8 less certain on legal basis about that than I was
 9 before. So I'll mostly defer to the lawyers there.
 10 But I can think of situations where a municipality
 11 gets split, but it is not in a, you know, racially
 12 significant way that wouldn't trigger any type of
 13 analysis there.
 14 Q. All right. Let's go to page 35 of your report.
 15 A. (Witness complies.)
 16 Q. Here you are discussing demonstration district
 17 C, correct?
 18 A. Yes.
 19 Q. Okay. You say that discussing the black
 20 residents of demonstration district C you say: "Over
 21 10,000 of those black residents live at the top of the
 22 arm of the district that extends into and splits Vance
 23 County."
 24 Did I read that right?
 25 A. Yes.

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40 (Pages 157 to 160)

1 Q. Okay. How do you define top of the arm of the
 2 district that extends into and splits Vance County?
 3 A. I believe that was in Vance County.
 4 Q. Okay. So there your view is you're defining
 5 top of the arm to just include all of Vance County
 6 that's in demonstration district C?
 7 A. That's my recollection.
 8 Q. But that wasn't necessarily the way in which
 9 you defined top of the arm when you were talking about
 10 a portion of the district that split Pasquotank
 11 County?
 12 A. Yeah, it is a different shape in Pasquotank and
 13 Gates.
 14 Q. What about the shape of Gates makes it more
 15 appropriate to consider a part of the arm with
 16 Pasquotank?
 17 A. Well, because Gates includes part of the
 18 portion that branches off from the rest of the
 19 district and would form an arm.
 20 We could debate whether Gates is really
 21 the shoulder instead of the arm, but seems like a
 22 pointless debate.
 23 Q. Okay. How would you verify this claim about
 24 the 10,000 residents based on your backup data?
 25 A. I'd have to look at the relevant R code.

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1 A. Yes.
 2 Q. All right. What percentage of Vance County's
 3 white voting age population is in demonstration
 4 district C?
 5 A. I don't know.
 6 Q. So you concluded that demonstration district C
 7 separates the black population from the white
 8 population of Vance County, even though you have no
 9 idea how much of Vance County's white population is in
 10 demonstration district C. Is that right?
 11 A. Yes.
 12 Q. Okay. So I want you to imagine you have two
 13 kindergarten classes, and one had six boys and four
 14 girls and the other had four boys and six girls. Are
 15 you with me?
 16 A. Okay.
 17 Q. Would you say the school had separated the boys
 18 from the girls?
 19 MR. STRACH: Objection.
 20 A. I don't know. For something like that you
 21 could apply a T test to try to determine whether it
 22 was consistent with random placement or not. I
 23 haven't done that analysis.
 24 There's no spatial confirmation for the
 25 students when you are doing it that way, so it's a

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1 Q. On page -- let's turn to page 38.
 2 A. (Witness complies.)
 3 Q. You say, "overall the odd looking arm separates
 4 the black population of Vance County from the white
 5 population"?

6 A. Yes.
 7 Q. Do you see that?
 8 A. Yes. I mean, that's on 38 to 39, but yeah.
 9 Q. Okay. What threshold did you apply to
 10 determine whether the district line separate the black
 11 population of Vance County from the white population?
 12 A. This gets back to where I said the Supreme
 13 Court guidance on this has been less than helpful,
 14 because it usually is an eyeball test. But I think it
 15 is pretty clear looking at that where the divisions
 16 lie. The boundary blocks are almost all heavily
 17 white, almost all heavily white on the exterior and
 18 heavily black on the interior. It is not to say every
 19 single one is, but...
 20 Q. On page 38 you conclude that 63 percent of the
 21 black voting age population of Vance County is in
 22 demonstration district C, correct?
 23 A. Yes.
 24 Q. 37 percent of the black population is left out
 25 of the district?

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1 little different than this, since you can't just
 2 randomly place Census blocks in or out of districts as
 3 kind of an alternative hypothesis. I don't think that
 4 would work.
 5 Q. So you are standing by your statement that a
 6 district that contains 63 percent of the black voting
 7 age population and leaves out 37 percent, separates
 8 the black population from the white population?
 9 A. Not always. Depends how the district boundary
 10 is drawn.
 11 Q. Okay. Would it surprise you to learn that 42
 12 percent of Vance County's white voting age population
 13 is contained in demonstration district C?
 14 A. No.
 15 Q. Okay. In your figure 21, this is your map of
 16 the way in which district C splits Vance County,
 17 correct?
 18 A. Yes.
 19 Q. All right. There are multiple blocks that are
 20 over 70 percent BVAP that are excluded from the
 21 demonstration district, even though they are in the
 22 northern part of Vance County, correct?
 23 A. Yes.
 24 Q. Okay.
 25 A. Northwest.

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1 Q. Right.
 2 Did you conduct any investigation of
 3 whether those blocks could have been included in the
 4 demonstration district without raising the population
 5 above the allowable limit?
 6 A. No.
 7 Q. Okay. Do you see the large collection of
 8 yellow blocks in this figure 21 right around where the
 9 number 1 label is?
 10 A. Yes.
 11 Q. That represents a collection of Census blocks
 12 that are majority white, correct?
 13 A. Correct.
 14 Q. That are included in demonstration district C?
 15 A. That's right.
 16 Q. Is it your opinion that the white people in
 17 those Census blocks in demonstration district C are
 18 separated from the black population in demonstration
 19 district C?
 20 A. Can you repeat that?
 21 Q. Is it your opinion that the white people in
 22 those yellow blocks in demonstration district C are
 23 separated from the black population in demonstration
 24 district C?
 25 A. No.

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1 in demonstration district C that includes part of
 2 Vance County is more odd looking than the shape of
 3 district 27?
 4 A. I haven't looked at district 27 before, so I
 5 don't really have testimony one way or another on it.
 6 Q. I'm asking for your opinion right now?
 7 MR. STRACH: Objection.
 8 If you can, answer.
 9 A. As best I can see on this, that's a really
 10 weird looking arm.
 11 Q. The one in Guilford?
 12 A. Yes.
 13 Q. All right. Is odd looking a term that has a
 14 specific meaning in political science?
 15 A. No.
 16 Q. What expertise did you apply to reach the
 17 conclusion that the arm in Vance is odd looking?
 18 MR. STRACH: Objection.
 19 A. Well, as I understand the inquiry the Supreme
 20 Court has asked people to engage in is to look for odd
 21 looking arms and appendages on districts. So I tried
 22 to follow that.
 23 Q. Did you apply any expertise as a political
 24 scientist?
 25 MR. STRACH: Objection.

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1 Q. Okay. All right. Do you understand that what
 2 you refer to as the odd looking arm in demonstration
 3 district C tracks precinct boundaries?
 4 A. Yes.
 5 Q. You understand that it incorporates 98 percent
 6 of the city of Henderson?
 7 A. Yes.
 8 Q. Okay. All right. I'm going to drop another
 9 exhibit --
 10 MR. STRACH: Can we take a quick break?
 11 MS. THEODORE: Yes.
 12 (Recess taken.)
 13 MS. THEODORE: I'm going to mark what I
 14 just sent over as Exhibit 13.
 15 (Deposition Exhibit No. 13 marked for
 16 identification.)
 17 BY MS. THEODORE:
 18 Q. Do you recognize this as a map of the 2023
 19 enacted Senate districts?
 20 A. Yes.
 21 Q. Okay. I want to direct your attention to
 22 what's labeled district 27 in Guilford County. Do you
 23 see that?
 24 A. Yes.
 25 Q. All right. Is it your testimony that the arm

1 A. I don't think there's any political science
 2 test for odd looking arms and appendages, but it is my
 3 understanding of how the Supreme Court has instructed
 4 part of the eyeball test to be conducted, so I
 5 conducted it.
 6 Q. You are not suggesting you are better equipped
 7 to conduct that eyeball test than a layperson, are
 8 you?
 9 MR. STRACH: Objection.
 10 A. That's why I get to the point that, you know,
 11 on some of these things I was just asked to draw the
 12 map and I don't like to give ultimate testimony on
 13 whether it's reasonably configured or not. I think it
 14 looks odd looking, but that's ultimately something for
 15 the trier of fact to decide.
 16 Maybe the judge will agree; maybe he
 17 won't.
 18 Q. Okay. I want to ask you some questions about
 19 your dot density maps. I think you have six of these,
 20 figure 10, 13, 16, 17, 20 and 23. Does that sound
 21 right?
 22 A. I don't have a reason to dispute you on that.
 23 Q. Okay. Did you use R to create the dot density
 24 maps?
 25 A. Yes.

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1 Q. Okay. On page 27 of your report you say, "dot
 2 density maps have been utilized in cases at least back
 3 to the Bethune Hill case where Dr. Rodden employed
 4 them to examine the distribution of residents of
 5 districts."

6 Did I read that right?

7 A. Yes.

8 Q. Are you familiar with the dot density map that
 9 Dr. Rodden used in that case?

10 A. I've seen them, but it was a while ago.

11 Q. Okay. All right. So then you say on page 27
 12 that "in a dot density map Census blocks are taken as
 13 the basis for the district," correct?

14 A. Yeah, that's one I might have wordsmithed a
 15 little different, saying they are taken, because you
 16 can take it from BTDs, you can do it from counties if
 17 you want.

18 Q. Okay. Okay. In your dot density maps you use
 19 one blue dot for 10 black citizens of voting age. Is
 20 that right?

21 A. I think I have somewhere every dot is one
 22 person, but that's generally how I approach it.

23 Q. All right. Then you use X for every one white
 24 person or every 10 white people?

25 A. Yes.

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1 meter. Might be able to do with that geocoding.

2 Q. Okay. Can you turn to figure -- figure 16 on
 3 page 33?

4 A. (Witness complies.)

5 Q. All right. So if I'm looking at figure 16 on
 6 the computer, I see some dots that are dark blue, some
 7 dots that are sort of light blue, some dots that look
 8 sort of purple. Do you see what I mean?

9 A. No. I'm color blind.

10 If you are bringing red into it, like the
 11 difference between blue and purple, no. I just see
 12 blue. But I'm color blind, so that's an important
 13 caveat.

14 Q. Right, okay. So can you explain why some dots
 15 in your maps would be different shades of blue?

16 A. No, because they all look blue to me. They are
 17 all coded as blue. Blue is the only color.

18 It may be that for people with typical
 19 color vision the orange, the red from the orange
 20 interacts with the blue to make it look slightly
 21 different shade. But I'm sorry, I can't answer that
 22 really.

23 Q. Okay. Any reason in the code why a dot would
 24 appear as purple instead of blue?

25 MR. STRACH: Objection.

1 Q. How do you decide where within the Census block
 2 the dot or X is placed?

3 A. It's randomly placed by R.

4 Q. Okay. Did you change the placement of any dot
 5 or X in any of your dot density maps in the report?

6 A. I don't think so.

7 Q. Okay. So the fact that a dot or X is next to a
 8 district line doesn't necessarily mean that the people
 9 in that Census block live near the district line. Is
 10 that right?

11 A. Well, that's part of why I use blocks as my
 12 foundation here is that blocks are generally, not
 13 always, but generally pretty small geographic units.
 14 And so if a person in a block is near the district
 15 line, it's probably going to be near the district
 16 line.

17 Q. Well, a block in certain areas could span like
 18 hundreds of square miles, couldn't it?

19 A. Some blocks are bigger than others, but
 20 generally speaking you can look at the choropleth maps
 21 and see we are talking about some pretty small units
 22 geographically.

23 But, yeah, we don't know, from the Census
 24 we don't know the geocodings of the locations of the
 25 people, so we can't put it, you know, within a square

1 A. No. The command is to make them blue.

2 Q. Okay. On page --

3 A. So they would be blue, but the eye might
 4 perceive it differently, I guess. I don't know. They
 5 all look blue to me.

6 Q. Okay. On page 33 you say, "we can create a
 7 similar dot plot where one dot represents one person
 8 though over plotting begins to become an issue
 9 depicted below."

10 Did I read that correctly?

11 A. Yeah.

12 Q. All right. You're referring to the figure 17
 13 on page 34?

14 A. Yes.

15 Q. What do you mean by over plotting begins to
 16 become an issue?

17 A. You start to get, you know, for a block of
 18 1,000 people or even 100 people, that maybe takes up,
 19 you know, 5 by 5 millimeter area on the page, that's
 20 an awful lot of dots to print in one area, so you kind
 21 of get a blob, which is what I think you start to the
 22 really see on this page.

23 Q. Okay. So it is not really possible to tell
 24 from the blobs of orange like how many white people
 25 are actually in the relevant region?

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43 (Pages 169 to 172)

1 A. It is very difficult to count some of these
 2 blocks. These start to effectively become choropleth
 3 maps, because you are just kind of filling in --
 4 they're like yes no choropleth maps, because you are
 5 filling in regions.
 6 So, I mean, people always complain no
 7 matter what I do with the dot plots. So I was trying
 8 to give a couple different looks on it and explain why
 9 I like the one dot equals 10 people, but...
 10 Q. Okay. In the area of Elizabeth City in this
 11 figure 17, are the blue dots that are sort of in the
 12 blue blob there obscuring orange Xs for white people?
 13 A. Yeah. That's part of the over plotting issue.
 14 Q. Okay. So in that area of sort of the blue
 15 blobs there are white people, they are just sort of
 16 under the blue blob in the map. Is that right?
 17 A. Yeah. Like I said, this isn't my favorite
 18 look. Over plotting starts to become an issue. But
 19 sometimes people complain, so here's what it looks
 20 like with one person.
 21 Q. Okay. On page 27 -- let's flip back there --
 22 you state that your dot density plots are using black
 23 CVAP and white CVAP. You see that?
 24 A. Yeah. I think that's wrong, because I don't
 25 know if that's right or not.

1 A. Right. It is residents of voting age, not
 2 citizens of voting age.
 3 Just to clarify, because you did give an
 4 instruction, I will not look at anything that you
 5 haven't given to me, but if something has been marked
 6 and it's an exhibit in this deposition, I consider it
 7 fair game. I will look at it if it is helpful.
 8 Q. Okay. Is that, the sentence that says, "I
 9 employ one blue dot for 10 black citizens of voting
 10 age and an orange X for 10 white citizens of voting
 11 age," on page 27, did you just copy that language from
 12 another report in which you use CVAP for the dot
 13 density plots?
 14 A. I don't think so. I think I was just in a
 15 groove of talking about citizens of voting age and
 16 made the mistake.
 17 Q. Okay. Have you done dot density plots on the
 18 basis of CVAP rather than VAP before?
 19 A. I don't think so, because that gets really,
 20 that raises a lot of the issues that we have talked
 21 about elsewhere in this deposition about not really
 22 knowing what the CVAP would be down to the block level
 23 to enable this.
 24 Even at the block group level because the
 25 error margins are so substantial there, I think it

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1 Q. Okay. I mean, just turning to page 28 where
 2 you have figure 10, do you see you say one blue dot
 3 equals 10 black residents of voting age?
 4 A. Yes. I see that. It is definitely the BVAP.
 5 I shouldn't say that. I'm pretty sure
 6 it's the BVAP.
 7 Q. Sitting here today you can't, you don't know
 8 whether you used BVAP or CVAP for these dot density
 9 plots?
 10 A. It is VAP.
 11 Q. I'm sorry?
 12 A. It's voting age population.
 13 Yes, voting age population. I'm looking
 14 at the code.
 15 Q. Okay. Just please don't look at anything
 16 without, unless I've given it to you to look at.
 17 A. You have given this to me. This is an exhibit.
 18 MR. STRACH: He has the exhibits on the
 19 computer. That's all he's looking at.
 20 A. Remember we looked at my code earlier in the
 21 deposition.
 22 Q. I do remember that. Okay.
 23 All right. So it is voting age population
 24 and this statement on page 27 is incorrect?
 25 MR. STRACH: Objection.

1 would be tricky to do a dot density plot. I'm not
 2 going to say I've never done it before, I might have
 3 done it and not really thought about the error margin
 4 issue, but I honestly can't think of an instance where
 5 I've done it.
 6 Q. Okay. So is the goal of the dot density plots
 7 to show whether the demonstration district order
 8 tracks areas where black people are a majority of the
 9 population?
 10 A. I think the choropleth maps are better --
 11 first, I don't know how the lawyers plan to argue
 12 this. A lot of this isn't a goal. It is I was asked
 13 to create maps and I did.
 14 My general view is that the choropleth
 15 maps are better for tracking how the boundaries are
 16 drawn and that the dot density maps are better for
 17 showing distribution of the population.
 18 Q. Okay. BVAP is calculated by comparing the
 19 number of black residents of voting age to the number
 20 of all residents of voting age, correct?
 21 A. Yes.
 22 Q. Not just white residents of voting age?
 23 A. Correct.
 24 Q. Okay. If you take a district and you add a
 25 precinct where black voters are less than half of the

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1 voting age population, that's going to bring down BVAP
 2 percentage in your district, correct?
 3 A. Depends on if your district is majority BVAP,
 4 then yes.
 5 If your district is 20 percent BVAP, then
 6 it wouldn't necessarily do that.
 7 Q. Fair enough.
 8 All right. If you take a majority BVAP
 9 district and add a precinct where black voters are
 10 less than half the voting age population, that will
 11 bring down the BVAP of that district, correct?
 12 A. Yes.
 13 Q. That would be true even if the precinct had
 14 more black voters than white voters?
 15 A. You mean actual voters? Yeah.
 16 Q. More black residents of voting age population
 17 than white residents of voting age population?
 18 A. Right.
 19 Q. All right. So your dot density plots only plot
 20 black people and white people, correct?
 21 A. That's right.
 22 Q. By excluding people who are of other races,
 23 your dot density plots give a misleading impression of
 24 how the district lines divide precincts that are
 25 majority black, don't they?

1 I don't think adding in Native American or
 2 Hispanic population here is going to make the black
 3 population look any more or less compact, but I guess
 4 that's a judgment call.
 5 Q. All right. I think I transmitted this exhibit
 6 already potentially, I think it is going to be --
 7 MR. STRACH: Is that Exhibit 5 that we
 8 didn't use?
 9 MS. THEODORE: It's going to be marked as
 10 Exhibit 5 that we didn't use.
 11 (Deposition Exhibit No. 5 marked for
 12 identification.)
 13 THE WITNESS: Which one is this?
 14 MR. STRACH: Go back to the list on Zoom.
 15 BY MS. THEODORE:
 16 Q. It says, 251 Soto Palmer Trende initial report,
 17 you see that?
 18 A. Yes.
 19 Q. Okay. Do you recognize this as a report that
 20 you filed in the Soto Palmer case we were talking
 21 about earlier?
 22 A. Yes.
 23 Q. Okay. If you go to page 32?
 24 A. Yes.
 25 Q. All right. Does that refresh your recollection

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1 MR. STRACH: Objection.
 2 A. No. Like I said, in my mind the use of, the
 3 utility of the dot density plot is to show
 4 distribution of the black population. It is better
 5 for answering the question of is the minority group
 6 compact for purposes of Gingles 1, which I understand
 7 plaintiffs don't generally concede the minority group
 8 itself has to be compact, but I think the choropleth
 9 maps are better for showing actual racialized line
 10 drawing.
 11 Q. Okay.
 12 A. Really, the orange Xs, white population is just
 13 to give a general sense of the overall distribution of
 14 the population, because if you just show the black
 15 population on the map, you know, it doesn't tell you,
 16 well, maybe there's like a bayou in the middle. But
 17 in the white population as well gives a better
 18 understanding of that.
 19 I wouldn't have any objection to anyone
 20 coming in and showing the dot plots with Hispanic and
 21 Native American added as well.
 22 Q. You have done that in other cases, haven't you?
 23 A. Well, I've done it for Hispanic population,
 24 yeah. I don't know if I've done three color dot plots
 25 or not.

1 that you have done dot density maps that include both
 2 the minority population of interest, the white
 3 population, and then other populations in three
 4 different colors?
 5 A. So -- yes. But in that -- yeah. Okay, yeah.
 6 In that case the Native American population was of
 7 interest as well, which was pretty much what the other
 8 dots would be.
 9 But, yes, I have done three way plots
 10 before.
 11 Q. Was there a reason you chose not to do a three
 12 way plot in this case?
 13 A. I think when you don't have large empty swaths
 14 that show a concentration at least theoretically of
 15 the Native American population, it doesn't add a whole
 16 lot, especially since here we really are just
 17 concerned with the compactness of the black
 18 population. But I don't think it is wrong to show the
 19 other populations on as well. I don't think it
 20 changes the analysis any.
 21 Q. Okay. So I want to understand how the rounding
 22 works in the dot density plots that use Xs and dots to
 23 represent 10 people. Is it true that one orange X
 24 could represent anywhere from 5 to 14 white people in
 25 a Census block?

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45 (Pages 177 to 180)

1 A. That's not quite right. That's not quite
2 right.
3 Q. Let me put it differently. If there were
4 between 5 and 14 white people in a Census block, your
5 plot would show one orange X in that Census block. Is
6 that true?
7 A. That's right.
8 Q. If you have two orange Xs in a Census block,
9 you could have anywhere from 15 to 24 white people in
10 that Census block. Is that true?
11 A. Right. One of those dots would be 10 people
12 and the other is rounded.
13 This is precisely why I include the dot
14 plot that has one -- this is precisely the objection
15 that is why I include the dot plot that has one dot
16 being one person. I mean, you kind of pick your
17 poison, you either include some rounding or you
18 basically transform your map into a choropleth.
19 Q. Okay. But I just want to focus on sort of the
20 numbers here for a minute. One blue dot in a Census
21 block would represent -- let me start again.
22 If there's one blue blot in a Census
23 block, that means there are anywhere from 5 to 14
24 black people in that Census block. Is that correct?
25 A. That's correct.

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1 A. If it were just one block in the map, that
2 would be a pretty substantial -- that could be a
3 pretty substantial problem. Spread out over the
4 course of hundreds of blocks, that's going to be less
5 of a problem, because you are going to get examples on
6 each extreme.

7 Q. You would agree that 15 is nowhere near twice
8 as many as 14, right?

9 A. I'll agree to that.

10 Q. Okay. Don't you think it is inaccurate to
11 portray the white population in a geographic area as
12 twice the size of the black population if, in fact,
13 there may be nearly the same number of white and black
14 people in that area?

15 MR. STRACH: Objection.

16 A. Well, none of these plots are perfectly
17 aggregated. The whole point of data visualization is
18 usually -- part of the trick I should say of data
19 visualization is usually you lose some information.
20 So what the maps on pages 33 and 34 show is that you
21 kind of have choice, you can retain all the
22 information about individual level data and you end up
23 with over plotting as an issue, or you can choose to
24 have some rounding error that probably cancels out in
25 the aggregate.

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1 Q. Okay.
2 A. For the maps with 10, not for the maps that
3 have one dot equals one person.
4 Q. Right.
5 I think five of the six dot plots in your
6 report have the one dot equals 10 people. Is that
7 right?
8 A. Yeah. From my point of view, it is better to
9 have the random error from rounding, which is this
10 scale probably cancels out in the aggregate, versus
11 the massive over plotting, and I think that's what
12 figure 17 suggests.
13 But if someone thinks that's misleading
14 and you have a better view using one dot meaning
15 1 person, I mean, these plots are pretty easily
16 customizable and they could be produced.
17 Q. Okay. So in a Census block with two orange Xs
18 and one blue dot, your plot is visually depicting
19 twice as many white people as black people, right?
20 A. Yes.
21 Q. In reality that Census block with two orange Xs
22 and one blue dot could have 15 white people and 14
23 black people, correct?
24 A. It is possible, yeah.
25 Q. Okay.

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1 So, yeah. It is kind of pick your poison,
2 but these dot plots are accepted and you kind of have
3 a choice between one or other. If someone has a
4 better way to do it, I'm open to it.

5 Q. Okay. There was a lot there, so I just want to
6 ask you a few questions. So just to focus again on
7 figure 17, which I think is the plot you were
8 referring to that has one X per person?

9 A. Um-hm.

10 Q. That plot doesn't, in fact, retain all of the
11 data, because the blue blob is covering up a lot of
12 orange Xs. Isn't that true?

13 A. Yeah. That's what I said in the introduction,
14 a lot of data analysis is choosing what information
15 you retain and what you're going to lose. These two
16 plots are a great example in my mind of the trade offs
17 involved.

18 Q. Okay. When you say dot plots are accepted,
19 what are you referring to?

20 A. Like I said, dot plots have been used in
21 redistricting cases going back at least to
22 Dr. Rodden's dot plots in Bethune Hill, maybe
23 longer -- I shouldn't say dot plots. I should say dot
24 density maps, which is the more precise term.

25 Q. Okay. Any other examples of cases where dot

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1 density plots were accepted in redistricting cases
 2 that come to mind?
 3 A. I think Michael v. McDonald used them in one of
 4 the Virginia cases, maybe not Bethune Hill, but I'm
 5 blanking on the name of the legislative case.
 6 Q. Okay. So putting aside the question of whether
 7 there are better options, I just want to ask the
 8 question: Do you think it is inaccurate to portray
 9 the white population in a geographic area as twice the
 10 size of the black population when, in fact, there may
 11 be nearly the same number of white and black people in
 12 that area?
 13 A. It is inaccurate at the block level. It is not
 14 necessarily going to be inaccurate at the map level,
 15 which is the area that we are interested in.
 16 Q. All right. What did you do to determine it
 17 wasn't inaccurate at the map level?
 18 A. Well, we talked about that normal distribution
 19 earlier. And there's something called law of large
 20 numbers that isn't specific to normal distribution,
 21 but as you take more and more -- it lies kind of at
 22 the heart of frequentism, as you take more and more
 23 samples, your distance from the mean decreases greater
 24 and greater.
 25 So sometimes, yes, you will have a plot

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1 A. Yes.
 2 Q. Okay. Isn't that also true of the populations
 3 that you are using to create these dot density plots?
 4 A. Apples and oranges.
 5 Q. You don't agree that populations of black
 6 people and white people for purposes of your dot
 7 density plots may be geographically clustered together
 8 in non random fashion?
 9 A. They may be clustered, but the errors wouldn't
 10 be, because you could have -- if there are, say, 10
 11 black individuals and 15 or 20, yeah, whether there
 12 are 9 black individuals or 10 black individuals or 11
 13 or 16, that type of distribution is not going to be
 14 randomly distributed.
 15 Where it starts to become a problem where
 16 you can't use the weak law of large numbers is when
 17 you have spatial heterogeneity in how you split the
 18 district. So when you are splitting these block
 19 groups, you don't know whether it is just as likely
 20 for the black population to be outside of the district
 21 as it is inside of the district. In fact, given that
 22 minority populations are clustered there probably is a
 23 pattern to how they are distributed within the
 24 district.
 25 That's different than literal rounding

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1 that distributes, that shows 14 black residents and --
 2 there's 14 black residents and 15 white residents. It
 3 shows two Xs and one dot. But sometimes you will have
 4 the proportions winding up at the other end of those
 5 extremes as well. So in the aggregate it will tend to
 6 cancel out and give you an accurate depiction.
 7 Q. Is there any reason to think that the Census
 8 blocks where you have the error in the opposite
 9 direction are going to be near the Census blocks where
 10 you have the error in the original direction?
 11 A. It is going to be randomly distributed. So
 12 sometimes yes, sometimes no.
 13 Q. On page -- let's turn to page 27 of your
 14 report -- I'm sorry. Let's turn to page 17 of your
 15 report, footnote 7.
 16 A. (Witness complies.)
 17 Q. Here you are talking about distribution of
 18 error in CVAP estimates, correct?
 19 A. Right.
 20 Q. All right. You say here that you have good
 21 reason to believe that errors in CVAP estimates are
 22 not randomly distributed since populations are often
 23 geographically clustered together in non random
 24 fashion.
 25 Do you see that?

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1 area, which is what we are talking about with the dot
 2 density plots. It is completely different.
 3 Q. Are you aware of any academic work that has
 4 validated your statement that the errors here are
 5 going to be randomly distributed across the district?
 6 A. It is literal rounding error. Yes, there will
 7 be.
 8 Q. What can you point me to that would support
 9 that conclusion?
 10 A. That there is a round command in R that rounds
 11 the data up or down. That rounding error is
 12 completely different than the error you get by
 13 splitting a block group where there's a good chance
 14 the minority population and the white population
 15 within that block group are clustered together.
 16 Again, if someone thinks this is an issue,
 17 they are more than welcome to produce a dot density
 18 plot that they think shows things better for you.
 19 I've seen an attempt at that and I think it makes
 20 things worse for you, but, like I said, a lot of this
 21 involves judgment calls. That's the nature of data
 22 visualization.
 23 Q. I want to understand, you have done no work in
 24 this case to validate the assumption that the rounding
 25 that you engaged in doesn't matter?

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1 MR. STRACH: Objection.
 2 A. I'm sorry you don't understand, but I think
 3 I've been about as clear as I can be on that. That it
 4 is literal binomial rounding error, sometimes it's
 5 going to be higher, sometimes it's going to be lower.
 6 In the aggregate that type of error will cancel out,
 7 as opposed to some error from splitting a block group
 8 where we have good reason to believe that the
 9 residents are spatially constrained, where you have
 10 relatively small number of block groups, and where we
 11 don't even have any type of known distribution to
 12 compare the error rate to. So...
 13 Q. How many block groups will it take for the
 14 rounding errors to cancel out?
 15 A. Well, that's just it, it is not a rounding
 16 error for the block groups when it comes to splitting
 17 CVAP. You are splitting block groups in a
 18 particularized way and since the populations tend to
 19 be randomized, but generally speaking like when you
 20 start to get about 30 observations that's when you
 21 start to be able to talk about this type of
 22 cancellation working.
 23 But even then, because we can't know true
 24 value when we are talking about the block groups being
 25 disaggregated, we have nothing ever to test against,

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1 dot plots, are you suggesting that you need 30 blocks
 2 for the rounding errors to cancel out?
 3 A. It's a rule of thumb, but, yeah, that's when I
 4 would start to expect it to work.
 5 Q. Okay. So what that means is that if you have
 6 one block that has two orange Xs for 15 white people
 7 and one blue dot for 14 white people, then maybe
 8 another block that's 30 blocks away might have the
 9 opposite error?
 10 MR. STRACH: Objection.
 11 A. Or the block that's right next door might have
 12 the opposite error.
 13 Q. You just don't know?
 14 A. Well, no. That's the point of randomness. But
 15 when you have hundreds of blocks, you are well past
 16 the threshold of 30, and so in the aggregate those
 17 errors are going to cancel out.
 18 Like I said, if there's a suggestion that
 19 somehow these maps are deceiving the eye, it would be
 20 very easy to demonstrate that by just replicating the
 21 map. And if this rounding error is causing huge
 22 problems, then replicating the map should give you a
 23 radically different view. But I know Dr. Collingwood
 24 produces his maps and I don't think they are radically
 25 different.

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1 we have no idea how those errors are distributed.
 2 Q. Okay. But, again, you didn't test how the
 3 errors were distributed in your racial dot plot?
 4 A. No. I have no reason to believe that there's
 5 any type of pattern to how the errors exist. If one
 6 of your experts had come in and down that analysis, it
 7 might have changed my presumption, but since you just
 8 have literal rounding errors that are going to be a
 9 binomial yes no high low, in the aggregate they will
 10 tend to cancel out.
 11 Or your experts could have run a bunch of
 12 dot plots and shown how from view to view because of
 13 that rounding error, the looks from the dot plots are
 14 radically different. But I'm fairly confident if they
 15 tried that they wouldn't be able to show the outputs
 16 are radically different, because these errors are
 17 going to cancel out.
 18 Q. When you say that the errors are going to
 19 cancel out in your dot plots, what you mean is that if
 20 you have -- well, let me ask you this: Your reference
 21 to 30 blocks, was that referring to your assessment of
 22 when the errors cancel out in your dot plots?
 23 A. That's just a general rule of thumb of when
 24 these type of convergence metrics become useful.
 25 Q. So with respect to your dot plots, your racial

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1 Q. When you say replicating the map, do you mean
 2 with a different rounding or what do you mean?
 3 A. No. No. Just run the code. You will get a
 4 different set of roundings. It is what we were
 5 talking about earlier that like with the normal --
 6 kind of like draws on that normal distribution idea,
 7 if you take repeated samples, you start to get a look
 8 of the true distribution. And so if this rounding is
 9 causing you to believe that there are, say, twice as
 10 many black people relative to white people in
 11 Elizabeth City, that should really quickly become
 12 apparent if you generate multiple maps.
 13 Q. I may not be following. I thought that these
 14 dots plots are using BVAP data at the Census block
 15 level from the decennial Census. Isn't that true?
 16 A. Yes.
 17 Q. So your code, when your code is rounding, your
 18 code is taking data from the Census that says this
 19 block has --
 20 A. I see what you're saying. I'm misstating. It
 21 will place it slightly different within the block.
 22 But the rounding will be same.
 23 You can compare it to maps that I produced
 24 that have a dot, you know, one dot per person. I
 25 don't think they give a radically different view of

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1 what the distribution of black people within the
 2 district are.
 3 Like I said, all these dot density maps no
 4 matter what have this shortcoming, that you either
 5 have to do some rounding or you end up with a blob.
 6 I don't think it gives -- I simply
 7 disagree with you that it gives any type of misleading
 8 view as to the overall distribution of black people in
 9 this map vis-a-vis white people. I don't see how you
 10 can think that.
 11 Q. All right. Dr. Trende, I just want to make
 12 sure the testimony is clear on sort of the way in
 13 which this works. So the rounding is, your rounding
 14 is, you take the actual number from the decennial
 15 Census for that Census block, right, and then you
 16 round it down or up, right?
 17 A. Right.
 18 Q. That rounding is not going to change if you
 19 were to replicate what you have done here, is it?
 20 A. Right. The placement of the dots within the
 21 blocks will shift, though.
 22 Q. Okay. But that has nothing to do with
 23 rounding?
 24 A. Rounding will be the same from map to map.
 25 Q. Right. So what you said about replicating what

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1 blocks within them, so in the aggregate I think it's
 2 probably pretty good. You can see that by comparing
 3 it to the single dot plot map, I don't see things
 4 radically different, but I guess that's a judgment
 5 call about which reasonable minds can disagree.
 6 Q. When you say that these block plots have
 7 hundreds of Census blocks, the point of the plot is to
 8 show where the black and white people are located,
 9 right?
 10 A. Right.
 11 Q. So if an error is corrected, if you have an
 12 error in the opposite direction in one Census block
 13 that's 100 miles away from another Census block, that
 14 doesn't make the map more accurate, does it?
 15 A. If you have one more dot in a single Census
 16 block that is surrounded by, say, five blocks that get
 17 the rounding right and then -- or I shouldn't say get
 18 it right. That have what you would depict even if you
 19 weren't rounding. And then have another block
 20 adjacent to that that gets the rounding error in the
 21 other direction, no, I don't think you are going to
 22 get a radically -- I don't even think you are going to
 23 get a minorly misleading view of what's depicted. We
 24 just disagree on this.
 25 Q. Okay. Is it your understanding that Dr. Robin

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1 you did and seeing if it changes would not, you
 2 couldn't actually replicate what you did using
 3 different rounding and get a different map, correct?
 4 MR. STRACH: Objection.
 5 A. Well, yes. So I was visualizing it in terms of
 6 the placement of the dots and not the rounding. But I
 7 do think you could -- however you wish to do it, use
 8 different rounding rules to see if it gives you a
 9 radically different view of the distribution of black
 10 residents of the district versus white residents of
 11 the district.
 12 And at the end of the day it is a trade
 13 off involved with dot density maps. But sometimes you
 14 will have a block that rounds things up; sometimes you
 15 will have a block that rounds things down. In the
 16 aggregate I don't have any reason to believe that it
 17 wouldn't be presenting a generally acceptable view.
 18 Q. Right, but you have no basis for saying that in
 19 any particular group of Census blocks that it is
 20 presenting an accurate view of the number of white
 21 people and black people, any particular group of 15
 22 Census blocks, for example?
 23 MR. STRACH: Objection.
 24 A. I think within 15 you are getting pretty good.
 25 But, again, these maps all have hundreds of Census

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1 uses a version of dot density plots that require
 2 rounding?
 3 A. He would have to, because he's using one dot
 4 for 100 people in the Williamson case.
 5 Q. What about in the Bethune Hill case?
 6 A. I guess that's been a long time since I've
 7 looked at that.
 8 Q. How much larger are the Xs that you use for
 9 white people than the dots that you use for black
 10 people?
 11 A. I don't know. They both are sized one in R.
 12 Q. But Xs are larger in R than dots?
 13 A. Yes.
 14 Q. Okay. You could have chosen to make the
 15 symbols the same size, right?
 16 A. Could have shrunk the Xs more, yeah.
 17 Q. Wouldn't that have been more accurate?
 18 MR. STRACH: Objection.
 19 A. No.
 20 Q. Why not?
 21 A. Because I don't think it is inaccurate to have
 22 them larger. Like I said, I think it makes the black
 23 population look more dispersed to use the look that
 24 Dr. Collingwood and Mr. Esselstyn are suggesting.
 25 Q. Let's flip to -- well, all right. Before we do

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1 that, you could have used dots for both black people
 2 and white people, right?
 3 A. Yeah. But being color blind I'm kind of
 4 sensitive to dots are difficult to read, so I like
 5 having a different shape.
 6 Also, some printers aren't going to show
 7 things well, show shades well. So shapes are nice in
 8 that sense.
 9 Q. Could you have used a gray background and used
 10 white dots for white people and black dots for black
 11 people, right?
 12 A. Maybe.
 13 Q. Okay.
 14 A. How would you do that in the three way map that
 15 you all are suggesting, though?
 16 Q. Well, Dr. Trende, you didn't use a three way
 17 map, did you?
 18 A. Well, no. I know, but if you are insisting
 19 that a three way map is how it is supposed to be done,
 20 then a gray background with white dots and black dots
 21 doesn't leave an option I don't think for the third.
 22 So it's kind of my general take on all
 23 these criticisms, there's no perfect data depicting.
 24 They all have shortcoming and it is a question of
 25 which shortcoming you are happiest with.

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1 don't know, but they are identical. I figure if I set
 2 them identically, people would not be able to
 3 complain. I was apparently wrong, but I'm more than
 4 happy to see how these things look with different
 5 sizes, dots and Xs.
 6 I don't think it looks better for
 7 plaintiffs if you make the Xs smaller, but I could be
 8 wrong.
 9 Q. Okay. Are you aware of any peer reviewed text
 10 that supports the way that you have designed the dot
 11 plots in this case?
 12 A. No. I'm not aware of peer reviewed texts on
 13 how to use dot density maps in these cases in general
 14 or discussing the pros and cons. None of us seem to
 15 have cited it to each other.
 16 I just know how they have typically been
 17 used in cases before where courts have relied on them.
 18 But no matter what you do, if you are doing dot
 19 density map, you either -- well, yeah. I was changing
 20 the subject there and I shouldn't.
 21 Q. Okay. But just to be clear, you are not aware
 22 of any court that has relied on a dot density plot
 23 that uses Xs for white people and dots for black
 24 people, are you?
 25 A. No. I haven't done any legal research on that,

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1 What I like here is that the size is
 2 always one, so no one can come and yell that you use
 3 size .5 here and size one here.
 4 If someone thinks a better depiction gives
 5 a different answer, you can always produce your
 6 preferred look at the dot plots.
 7 But there is to my knowledge no peer
 8 reviewed text that says when you are doing dot plots
 9 you should size your Xs at 0.1 and your dots at 1.
 10 Q. To your knowledge, is there any peer reviewed
 11 text that says when you are doing dot plots you should
 12 use Xs that are a different size for one race and dots
 13 for another race?
 14 A. They aren't a different size. They are both
 15 size equals one.
 16 Q. Dr. Trende, your testimony is that the Xs in
 17 your plots are not a different size than the dots?
 18 A. We can put up the R code. They are both size
 19 equal one.
 20 Q. I'm not asking about the R code. I'm asking
 21 about a human being looking at these Xs and dots.
 22 Your testimony is that they are the same size?
 23 MR. STRACH: Objection.
 24 A. My testimony is that I set the size in R and
 25 however R determine s size, whether it is by area, I

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1 but I think the reason for using an X and a dot I've
 2 explained pretty well.
 3 Q. Okay. What's the alpha parameter on the dot
 4 density plot?
 5 A. It is transparency.
 6 Q. All right. You set the Xs representing white
 7 people to be fully opaque with an alpha value of one.
 8 Is that right?
 9 A. Right.
 10 Q. You set the dots representing black people to
 11 be more transparent with an alpha value of .5. Is
 12 that right?
 13 A. That's right. That's because of the over
 14 plotting issue.
 15 Q. Okay. Why did you choose to make white people
 16 fully opaque and black people transparent?
 17 MR. STRACH: Objection.
 18 A. Because of the over plotting issue.
 19 Q. Why did you choose to make white people opaque
 20 as opposed to black people opaque?
 21 MR. STRACH: Objection.
 22 A. Because of the over plotting issue. I don't --
 23 I don't understand what's confusing. I'm sorry.
 24 Q. You could have done the dot plot giving the
 25 alpha value of one to the blue dots, couldn't you?

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50 (Pages 197 to 200)

<p>1 MR. STRACH: Objection.</p> <p>2 A. But then it wouldn't address the over plotting</p> <p>3 issue since the blue dots are on the top.</p> <p>4 Q. Why did you put blue dots on top?</p> <p>5 MR. STRACH: Objection.</p> <p>6 A. Because one of them has to be drawn first, one</p> <p>7 has to be drawn second.</p> <p>8 If I had drawn the white population on</p> <p>9 top, I would have set the alpha for that to be .5 and</p> <p>10 alpha for the black population to be one to address</p> <p>11 the over plotting issue.</p> <p>12 Q. So you drew the white people first and then the</p> <p>13 black people. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. What's the stroke value in these dot</p> <p>16 density plots?</p> <p>17 A. It is the border, it is like -- so if you are</p> <p>18 drawing an X, if you can imagine like having a pen, it</p> <p>19 is how thick the pen is.</p> <p>20 Q. Did you set the stroke value differently for</p> <p>21 the Xs representing white people and the dots</p> <p>22 representing black people?</p> <p>23 A. Yeah, because stroke when you are dealing with</p> <p>24 circle does the exact same thing resizing it, but when</p> <p>25 you are dealing with X if you make the stroke zero you</p>	<p>1 look more heavily clustered?</p> <p>2 A. And isolated, yeah. Like I said, I started</p> <p>3 including white population, because I thought the</p> <p>4 black population alone was kind of an unfair look,</p> <p>5 because it didn't give a sense of the overall -- like</p> <p>6 what areas are populated and what areas are not.</p> <p>7 That's all I'm -- I'm not trying to do a comparative</p> <p>8 approach of the distribution of white and black</p> <p>9 residents, which I don't think has any relevance to</p> <p>10 anything. It is all about distribution of black</p> <p>11 population.</p> <p>12 There's just confusion about what's trying</p> <p>13 to be depicted here.</p> <p>14 Q. All right. Can we take a five-minute break.</p> <p>15 (Recess taken.)</p> <p>16 BY MS. THEODORE:</p> <p>17 Q. I want to return to one point we were talking</p> <p>18 about previously. You testified that rounding errors</p> <p>19 start canceling out after about 30 observations. Is</p> <p>20 that accurate?</p> <p>21 A. Yeah. The rule of thumb, that's right about</p> <p>22 I'd start to think they are going to cancel each other</p> <p>23 out mostly.</p> <p>24 Q. What's the basis for that rule of thumb?</p> <p>25 A. What I was taught in courses.</p>
<p>201</p> <p>1 don't have anything, because it is like using a pen,</p> <p>2 you have an infinitely small line.</p> <p>3 Q. Let's pull up Dr. Collingwood's rebuttal</p> <p>4 report, page 22.</p> <p>5 A. (Witness complies.)</p> <p>6 Q. This is a version that Dr. Collingwood did of</p> <p>7 your figure 16 that uses the same size dots for both</p> <p>8 races and swaps out the alpha parameters. Is that</p> <p>9 right?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. All right. Sitting here today you don't</p> <p>12 have any basis to believe you made any error in</p> <p>13 creating this figure 5?</p> <p>14 A. No. I'm fine with this.</p> <p>15 Q. Okay.</p> <p>16 A. I think it looks much worse for plaintiffs than</p> <p>17 what you drew.</p> <p>18 Q. All right. Do you think that your figure 16</p> <p>19 makes the white population of Pasquotank County look</p> <p>20 more substantial than it appears in Dr. Collingwood's</p> <p>21 version?</p> <p>22 A. I mean, possibly. But it makes the black</p> <p>23 population look a lot more heavily clustered and</p> <p>24 isolated, which is the point of the dot plots.</p> <p>25 Q. You think his figure makes the black population</p>	<p>203</p> <p>1 Q. Is there a book that says that somewhere?</p> <p>2 A. It is a rule of thumb, so no.</p> <p>3 Q. Okay. You haven't done any work to test out</p> <p>4 whether that rule of thumb applies to Census blocks,</p> <p>5 correct?</p> <p>6 A. No.</p> <p>7 Q. Okay. No, you haven't done any work to test</p> <p>8 that out?</p> <p>9 A. I have not done any work to test that out for</p> <p>10 Census blocks.</p> <p>11 Q. All right. I'm going to drop in the chat</p> <p>12 another exhibit, which I think are we on 14?</p> <p>13 (Deposition Exhibit No. 14 marked for</p> <p>14 identification.)</p> <p>15 BY MS. THEODORE:</p> <p>16 Q. Let me know when you have that open?</p> <p>17 A. Okay.</p> <p>18 Q. Okay. Scroll down to the second page.</p> <p>19 A. Okay.</p> <p>20 Q. Have you seen this -- well, this is a dot</p> <p>21 density plot, right?</p> <p>22 A. Yes.</p> <p>23 Q. Have you seen this before?</p> <p>24 A. Yeah, this looks like one of the dot density</p> <p>25 plots from Bethune Hill.</p>
<p>202</p>	<p>204</p>

1 Q. Okay. You see there that Dr. Rodden is using
 2 black dots for black people and white dots for white
 3 people against a gray background?
 4 A. Yeah.
 5 Q. Okay. He's using one dot for one person. Is
 6 that right?
 7 A. Yeah. That's why you are getting the over
 8 plotting in the urban areas.
 9 Q. Okay. Let's scroll down to the next to page 3.
 10 Is that more zoomed in dot density plot
 11 from Dr. Rodden in Bethune Hill?
 12 A. Right.
 13 Q. Okay. He's also using one dot for one person?
 14 A. Yes.
 15 Q. Black dots for black people, white dots for
 16 white people?
 17 A. Yeah, leaving out other races.
 18 Q. Right. So Dr. Rodden's dot density maps in the
 19 Bethune Hill case did not use rounding. Is that
 20 correct?
 21 A. I don't know if that's true of all of them, but
 22 it is true of the ones you have shown me.
 23 Q. You can't point, you are not aware sitting here
 24 right now of any dot density plots that Dr. Rodden
 25 used in the Bethune Hill case that used rounding?

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1 have been easier just to make up toy data, so there's
 2 no question about it to give an example of how it
 3 worked. But, yeah, the numbers might not be precise.
 4 It is the process that matters.
 5 Q. The process you describe is to weight the CVAP
 6 data based on the BVAP data for block group, correct?
 7 A. Well, there's a couple ways that people have
 8 used to do it. I'm just trying to give a general
 9 overview of how the process works. But the way I
 10 understand it most commonly done is to use the VAP
 11 data to weight the CVAP data, and then BVAP data to
 12 weight the BCVAP data.
 13 Q. When you are using BVAP data to weight BCVAP
 14 data is it appropriate to appropriate to use any part
 15 black BVAP data?
 16 A. I think that's how I've seen it done.
 17 Q. So your testimony is that the proper weighting
 18 is to use any part block CVAP data rather than -- I'm
 19 sorry.
 20 Your testimony is that it is appropriate
 21 to use any part black BVAP data rather than the three
 22 VAP categories that correspond to the categories that
 23 make up black CVAP data?
 24 MR. STRACH: Objection.
 25 A. My testimony is that there's a bunch of

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1 A. That's right. The one he uses in Williams have
 2 rounding. These don't, because those are done at the
 3 statewide level.
 4 Q. Okay. What case is that? Williams? Do you
 5 know what state that involves?
 6 A. North Carolina.
 7 Q. Can you turn to page 17 of your report?
 8 A. (Witness complies.)
 9 Okay.
 10 Q. All right. Did you review the section of
 11 Mr. Esselstyn's rebuttal report where he states that
 12 -- let me start again.
 13 On page 17 you describe how to do the
 14 disaggregation process of disaggregating CVAP data at
 15 the block group level to block level?
 16 A. Right.
 17 Q. Okay. Did you review the portion of
 18 Mr. Esselstyn's report where he states that your
 19 description on this page is incorrect?
 20 A. Sort of. He said the numbers for the districts
 21 were wrong, but I think the actual process which is
 22 what I was interested in was right.
 23 Q. Okay. Do you dispute that the numbers for the
 24 districts are wrong?
 25 A. I mean, I didn't look at it. Probably would

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1 different ways I've seen done with or seen this done.
 2 I think the most common way is to use the BVAP data to
 3 do it.
 4 But, again, I don't, here I don't do this
 5 analysis on my own. I just take the redistricting
 6 data hub, because I figured using that number we could
 7 avoid a nit picky fight over the different ways to
 8 aggregate disaggregate the data. But there's no one
 9 way to do it.
 10 Q. Okay.
 11 MR. STRACH: I've got to run out for a
 12 little bit, so Erika is going to be in charge of
 13 objections for however longer you have to go.
 14 MS. THEODORE: Okay.
 15 MR. STRACH: I hope I won't see you when I
 16 get back, but if I do, then I'll step back in.
 17 MS. THEODORE: Okay. I don't have too
 18 much longer.
 19 BY MS. THEODORE:
 20 Q. Can you describe the work that you did to
 21 respond to Dr. Mattingly's report in this case?
 22 A. I took his code and ran it to see what the
 23 Stephenson clusters would be.
 24 Q. Okay. You don't offer any opinion in your
 25 report about whether Dr. Mattingly's computer code

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<p>1 correctly implements Stephenson. Is that right? 2 A. That's right. 3 Q. Okay. Let's turn to figure 25 on page 43 of 4 your report? 5 A. (Witness complies.) 6 Q. This is a figure titled, "Suggested Stephenson 7 Grouping map A." Is that right? 8 A. Sorry. I was in Stephenson -- okay, yeah. 9 Q. This is a figure which you purport to show 10 Stephenson groupings if demonstration district A is 11 frozen. Is that right? 12 A. Yes. 13 Q. All right. This figure was not produced by 14 Dr. Mattingly's code or algorithm, was it? 15 A. That's right. 16 Q. How did you produce this figure? 17 A. I ran his code and it gave me lists of county 18 groupings and this is what I came up with. 19 Q. Did you draw this in some mapping program? 20 A. In R. It should be in the code I produced. 21 Q. Okay. This figure puts Washington County in 22 the wrong place, doesn't it? 23 A. Yes. 24 Q. Because Washington County should be grouped 25 with demonstration district A?</p>	<p>1 placed in group 9 and Washington ought not be placed 2 there. 3 Q. You say on page 42, "Dr. Mattingly reruns his 4 code for determining the optimal Stephenson county 5 groupings for maps A and C. This run forces Edgecombe 6 and Pitt counties to remain together." 7 Did I read that correctly? 8 A. Yeah. I think I misunderstood from his report 9 on that one. He clarifies that he didn't need to do 10 it for I, I believe, map A, because Edgecombe and Pitt 11 would be together as a default. So I misunderstood 12 him. 13 Q. Okay. So, in fact, Dr. Mattingly's run for map 14 C does not force Edgecombe and Pitt counties to remain 15 together? 16 A. If that's the one, then yes. I know for one of 17 them he didn't have to force them, because they 18 naturally are produced together. 19 Q. Okay. I'm sorry, we are going in the opposite 20 direction of your report. Can we turn to page 41? 21 A. (Witness complies.) 22 Q. Here you say in middle of the first paragraph: 23 "If we arrange the Census blocks in these counties" -- 24 you are talking about Edgecombe and Pitt -- "from 25 highest BVAP to lowest and place a sufficient number</p>
<p>209</p>	<p>211</p>

<p>1 A. Right. 2 Q. Okay. What was responsible for this mistake? 3 A. Coding error. 4 Q. Coding error. 5 A. I'm sorry. Let me be more specific, head this 6 off at the pass. A coding error in the actual 7 production of the map, not in the Stephenson groupings 8 that were produced. 9 Q. You told R, produce a map that has certain 10 counties in certain places? 11 A. Yeah. So... 12 Q. Can you open up -- why don't you open up the 13 code that we transferred earlier and maybe could you 14 tell me where in the code this error occurs? 15 A. I'm a step ahead of you. I'm just trying to 16 find it. 17 This doesn't have the, this doesn't have 18 the line numbers that come in the native R 19 implementation. But it is on like page 22 of the 20 printout, starts on page 21. 21 Q. Okay. Where is the error? 22 A. On group 9, where it says Washington is in 23 group 9. Group 9 is defined as counties. And then 24 filter name in and then in that, the C for 25 concatenate, there's a list of counties that should be</p>	<p>1 of blocks in a district without regard even to 2 contiguity to raise the population to the minimum 3 population threshold for a state Senate district in 4 North Carolina, the district would still be shy of 5 50 percent BVAP." 6 Do you see that? 7 A. Yes. 8 Q. How did you perform that analysis? 9 A. That's in the R code as well. 10 Q. Okay. Did the R code spit out some sort of 11 like CSV file output? 12 A. No. 13 Q. What does the R code spit out that allows you 14 to reach that conclusion? 15 A. So it takes the blocks and it arranges them 16 from highest BVAP to lowest, so it is within a data 17 frame or tibble, and then creates a cumulative list of 18 the population and the black population as you add 19 successively lower BVAP blocks to your quote unquote 20 district. And then when you get to the minimum 21 population threshold, it looks at the BVAP of that 22 quote unquote district and it is below 50 percent. 23 Q. That's just in the console that you are looking 24 at R in. Is that right? 25 A. Right.</p>
<p>210</p>	<p>212</p>

1 Q. Okay. So that's not saved anywhere?
 2 A. No, but it is replicable.
 3 Q. Okay. All right. You are familiar with the
 4 rule for creating groupings of counties described in
 5 Stephenson in subsequent North Carolina Supreme Court
 6 cases?
 7 A. I think so.
 8 Q. All right. What's your understanding of that
 9 rule?
 10 A. My understanding is that you draw the
 11 districts, the -- I know there's dispute between the
 12 parties as to exactly how you are supposed to account
 13 for the Voting Rights Act. My understanding is a
 14 little firmer, setting that aside, that you draw the
 15 single county districts or single county groupings
 16 first. Then you look for groupings of two counties
 17 and place them together. Three counties, so forth.
 18 Q. You say on page 25 of your report, "if counties
 19 were to split, which I understand to violate the
 20 Stephenson rule."
 21 Do you see that?
 22 A. Yes.
 23 Q. All right. Are you aware that the enacted
 24 state Senate maps splits 15 counties?
 25 A. Yes. It is not a per se rule against splitting

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1 best practice is to use statewide races, correct?
 2 A. I think it is tricky to use the, to add
 3 together state Senate races, because you introduce a
 4 certain degree of variance for lack of a better term
 5 that isn't going to be present in the statewide races.
 6 You get different candidates, candidates with
 7 different degrees of funding, so forth, whereas all
 8 that is held constant if you are using a statewide
 9 race.
 10 Q. Okay. So the best practice when you are
 11 assessing performance of a district with changed
 12 boundaries is to use statewide races?
 13 MS. PROUTY: Objection.
 14 A. I would generally use the statewide races.
 15 There might be like case specific instances where it
 16 is better not to, but as a general rule I think that's
 17 right.
 18 Q. Okay. Do you have an understanding of the term
 19 opportunity district in the context of the Voting
 20 Rights Act?
 21 MS. PROUTY: Objection.
 22 A. Yeah.
 23 Q. What's your understanding?
 24 A. So I have an understanding of it. I never had
 25 it entirely fleshed out. But my general understanding

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1 counties.
 2 Q. Okay. Did you review the portion of
 3 Dr. Mattingly's report where he explains that
 4 Stephenson does not minimize the splitting of
 5 counties?
 6 A. I know that to be true.
 7 Q. Okay. Do you have an understanding of the term
 8 performing crossover district in the context of the
 9 Voting Rights Act?
 10 A. It's a district that is short of 50 percent
 11 that's not a black majority district or a majority
 12 minority district, minority majority, but that
 13 nevertheless will elect an minority candidate of
 14 choice, where the minority group is reliant on the
 15 votes of a sufficient number of white voters.
 16 Q. Okay. Have you done performance analysis in
 17 your prior work in VRA cases?
 18 A. Yeah.
 19 Q. How do you assess whether a district is
 20 performing?
 21 A. My understanding is you look to see how
 22 statewide candidates have run in the district in the
 23 past who are the minority candidate of choice.
 24 Q. Okay. You agree that when assessing the
 25 performance of a district with changed boundaries the

1 is that it is a district where the minority group has
 2 an opportunity, an ability at least in some
 3 circumstances to elect its candidate of choice. I'm
 4 not sure exactly where that threshold lies, but that's
 5 my understanding.
 6 Q. Have you taken the position or reached a
 7 conclusion in prior expert work that a particular
 8 district was an opportunity district?
 9 A. I believe in Soto Palmer we did this analysis.
 10 We did some of this analysis in the Arizona and
 11 Virginia cases of where the districts would perform.
 12 Q. Was there a threshold you applied for, to
 13 decide whether you thought something was an
 14 opportunity district?
 15 A. I don't remember. But I think that's more of a
 16 legal term than an expert term. I mean, what
 17 qualifies an opportunity for the Voting Rights Act, I
 18 would say the black candidate of choice wouldn't have
 19 to win all the races, but maybe more, I mean, I don't
 20 know if one of 10 would cut it either, but I don't
 21 know. Maybe it is you have an opportunity if it is
 22 just some race that the minority candidate of choice
 23 has one.

24 I really think that's more of a legal
 25 issue than an expert issue.

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54 (Pages 213 to 216)

1 Q. Okay. Have you done any analysis of whether
 2 district 5 in the enacted Senate map is a performing
 3 crossover district?
 4 A. No.
 5 Q. All right. You haven't done any analysis of
 6 whether any district in the enacted Senate map is a
 7 performing crossover district, have you?
 8 A. That's correct.
 9 Q. All right. So you are not going to offer any
 10 opinions on that topic?
 11 A. No. I understand that another expert is
 12 handling that portion.
 13 Q. All right. I think that if we take like a
 14 15-minute break right now -- can we go off the record?
 15 (Recess taken.)
 16 BY MS. THEODORE:
 17 Q. Okay. All right. Dr. Trende, I just want to
 18 follow up on one thing you mentioned before. You said
 19 you thought that Dr. Rodden had done dot density plots
 20 using one dot for 100 people in a case called Williams
 21 in North Carolina. Is that right?
 22 A. That's right.
 23 Q. Do you know around when that case was?
 24 A. It is, it is ongoing.
 25 Q. Ongoing, okay.

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1 differential privacy was introduced, which is what
 2 would be a new problem for the aggregation
 3 disaggregation analysis.
 4 Q. Your testimony is that before 2020 the Census
 5 Bureau did not alter data at the block level related
 6 to race?
 7 A. My understanding is that's when the
 8 differential privacy rules for race were introduced,
 9 but I could be wrong on that.
 10 Q. All right. I'm going to transmit another
 11 exhibit. I think we're at 15.
 12 (Deposition Exhibit No. 15 marked for
 13 identification.)
 14 BY MS. THEODORE:
 15 Q. So I'll mark this as 15. Let me know when you
 16 have it pulled up?
 17 A. Okay.
 18 Q. Do you recognize this document?
 19 A. No.
 20 Q. You have never read this before?
 21 A. I don't think so.
 22 Q. This isn't the document that you cite on page
 23 18 to support your statement that beginning with the
 24 2020 Census data at the block level were randomly
 25 altered to mask individuals' identities including

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1 Is that the name of the current case right
 2 now that involves the Senate house and Congressional
 3 districts?
 4 A. Yeah. It is what I refer to it as. I'm sure
 5 there's two cases consolidated, so it might be the
 6 other one that most people are using.
 7 Q. Got it. Okay. Thanks.
 8 Okay. On page 18 of your report you say,
 9 "beginning with the 2020 Census data, data at the
 10 block level were randomly altered to mask individuals'
 11 identities including racial data."
 12 Do you see that?
 13 A. Yes.
 14 Q. Okay. Data at the block level were altered on
 15 the decennial Census to mask individual identities
 16 before the 2020 Census. Isn't that true?
 17 A. Yeah. That's right. That's another one that
 18 could have used some better wordsmithing.
 19 For example, differential privacy could
 20 have coded, would have altered the answers on income,
 21 so that you couldn't figure out exactly what Bill
 22 Gate's income was. Or that he wouldn't skew, you
 23 know, his block group. So, yeah, there's some of that
 24 that occurs before this.
 25 I believe the 2020 Census is when race

1 racial data?
 2 A. Okay. Then, yeah, I guess I have, if that's
 3 what this is.
 4 All right.
 5 Q. Is this that document?
 6 A. I don't know. I haven't looked at the document
 7 in a very long time. But if you are representing to
 8 me that's what this is, I don't have a reason to
 9 dispute you.
 10 Q. You filed this report in August, right?
 11 A. Yes.
 12 Q. So you looked at the document -- you looked at
 13 the document cited on page 18 in August?
 14 A. Probably in July.
 15 Q. Okay.
 16 A. I think we have established that I've done like
 17 three cases since then, so I don't remember -- no, I
 18 don't remember what every document that I looked at
 19 looks like today.
 20 Q. All right. Do you see there's a URL at the
 21 bottom of that document?
 22 A. Yes.
 23 Q. Does that look like the URL that you are citing
 24 on page 18?
 25 A. Yes.

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55 (Pages 217 to 220)

1 Q. Okay. Can we scroll down to page 2 of this
 2 document?
 3 A. (Witness complies.)
 4 Q. You see a section there that's titled, "due to
 5 privacy concerns reported data has always been
 6 different from raw data"?

7 A. Yes.
 8 Q. Okay. You understand that to be talking about
 9 the Decennial Census, correct?
 10 A. Yes.
 11 Q. All right. The document says, "since 2000 the
 12 Bureau has used data swapping between Census blocks
 13 as its main disclosure avoidance technique."
 14 Do you see that?
 15 A. Yes.
 16 Q. Then it goes on to give a hypothetical example
 17 in which it uses data swapping to switch data about
 18 race between Census blocks. Do you see that?
 19 A. I think that's ancestry.
 20 Q. Is it your testimony that in prior Census
 21 iterations the Census Bureau swapped ancestry data
 22 between Census blocks, but not race data?
 23 A. I don't know if it used, if it swapped ancestry
 24 going back to 2000, but my understanding -- I could be
 25 wrong on this -- my understanding was racial data was

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1 kept invariant along with most data at the Census
 2 block level with the exception of race."
 3 A. Yeah. But something changed with what they do
 4 with race and ethnicity data. Maybe I wasn't precise
 5 in how I put it, but in the very next paragraph it
 6 says, you highlighted, "race and ethnicity data are
 7 likely to be further from the as enumerated data than
 8 in past decades when data swapping was used to protect
 9 small populations."

10 So something happened to make these data
 11 at the block level for race worse, which is going to
 12 make this aggregation disaggregation more difficult
 13 than it's been in the past, because what you are using
 14 as the basis for weighting you have less confidence in
 15 than we had in the past.

16 Q. Okay. That's because we have less confidence
 17 in the decennial Census data, correct?

18 A. Right.
 19 Q. Okay. Do you agree that American Community
 20 Survey data is used to allocate trillions of dollars
 21 to communities across the United States?
 22 A. Yeah. I don't think the ACS data is inherently
 23 invalid. That's never been my testimony or my
 24 position.
 25 Q. Okay. I want to go back to demonstration

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1 new for 2020.
 2 So like if you go to the third page where
 3 things are highlighted, "race and ethnicity data are
 4 likely to be further from the as enumerated data than
 5 in past decades."
 6 Q. All right. Do you see the paragraph on page 3
 7 that says, "in 2010 and previous decades all of these
 8 were kept invariant along with most data at the Census
 9 block level with the exception of race"?"
 10 A. Yes.
 11 Q. Okay. So you understand based on that that the
 12 Census Bureau was altering racial data at the Census
 13 block level in Censuses prior to 2020?
 14 A. I don't, because from the sentence before it
 15 something has changed, because it says, "race and
 16 ethnicity data are likely to be further from the as
 17 enumerated date than in past decades."
 18 Q. I'm talking about the sentence in the prior
 19 paragraph. Do you see that?
 20 A. No. It is in the same paragraph. I think.
 21 You read the sentence in 2010 at the block level total
 22 population, et cetera, were all held invariant, right.
 23 Q. No. In the prior paragraph I read --
 24 A. Okay.
 25 Q. -- "in 2010 and previous decades all these were

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1 district E. You said you hadn't formed any opinions
 2 about demonstration district E. Is that right?
 3 A. Yes.
 4 Q. Was that your choice not to form any opinions
 5 about demonstration district E?
 6 MS. PROUTY: Objection. To the extent you
 7 are asking for his conversations with counsel, I'm
 8 going to instruct him not to answer.
 9 A. I can't answer that question.
 10 Q. You can't answer whether it was your choice
 11 not to reach any conclusions about demonstration
 12 district E?
 13 MS. PROUTY: Same objection.
 14 A. I can't answer that.
 15 Q. Did counsel instruct you not to reach any
 16 conclusions about demonstration district E?
 17 MS. PROUTY: Same objection. I instruct
 18 the witness not to answer.
 19 A. I can't reveal conversations with counsel.
 20 Q. Were you asked to analyze demonstration
 21 district E?
 22 MS. PROUTY: Same objection.
 23 A. Same answer. I can't reveal conversations I
 24 had with counsel.
 25 MS. THEODORE: Your position is that

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1 questions about what Dr. Trende was asked to do as
 2 part of his expert report are privileged?

3 MS. PROUTY: I think you are asking
 4 whether or not he was asked to analyze something
 5 that's not currently in his report.

6 MS. THEODORE: Throughout all of these
 7 depositions, including of our experts, you have asked
 8 questions about what the witnesses were asked to do.
 9 You are saying I can't ask Dr. Trende what he was
 10 asked to do for purposes of his expert work in this
 11 case?

12 MS. PROUTY: I would have to confer with
 13 some of my colleagues to understand. If you want to
 14 let me take the opportunity to do that, I'm happy to
 15 do that. If you want to move on based on the answer
 16 he's provided, we can do that as well.

17 BY MS. THEODORE:

18 Q. Dr. Trende, you could have formed opinions
 19 about demonstration district E between when it was
 20 provided to you in August and today. Isn't that
 21 right?

22 A. I don't know. I haven't looked into it. I
 23 assume I could have performed some sort of or come to
 24 some sort of opinion about it.

25 Q. You understand that the rebuttal report was

1 instructing him not to answer the question of whether
 2 he was asked to analyze demonstration district E? Is
 3 that right?

4 MS. PROUTY: That's correct.

5 BY MS. THEODORE:

6 Q. Did you ever tell counsel that you would have
 7 been able to analyze demonstration district E if you
 8 had more time?

9 MS. PROUTY: Same objection. I'm going to
 10 instruct the witness not to answer.

11 A. I've been instructed not to answer, so I will
 12 not answer.

13 Q. Okay.

14 MS. THEODORE: All right. I'm just going
 15 to take a short break. I want to confer on our
 16 response to your instruction not to answer.

17 MS. PROUTY: Sure. Help me understand,
 18 your first question is whether he was instructed not
 19 to analyze demonstration E, correct?

20 MS. THEODORE: Correct.

21 MS. PROUTY: Your second question is
 22 whether he, in fact, analyzed Demonstration E or not.
 23 Is that correct?

24 MS. THEODORE: I believe that he has
 25 testified that he did not analyze demonstration

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1 disclosed on August 30th, correct?

2 A. Or thereabouts is my recollection.

3 Q. Okay. Today is September 30th. Is that right?

4 A. Yeah.

5 Q. All right. Is one month long enough to reach
 6 conclusions about a demonstration district?

7 A. It depends what else you have going on in that
 8 month. If you have produced 170 pages of expert
 9 report in another matter, probably not.

10 Q. I'm going to ask again: Were you instructed
 11 not to analyze demonstration district E?

12 MS. PROUTY: Objection. I think the way
 13 you are asking this is asking for information that is
 14 protected by the attorney-client privilege.

15 To the extent you want to ask him has he
 16 analyzed demonstration district E, which I believe he
 17 has answered, that's different. But you are asking
 18 about his instructions from counsel, which I don't
 19 believe we have asked your experts about.

20 MS. THEODORE: I think you have repeatedly
 21 asked our experts about questions involving
 22 instructions from counsel.

23 All right. So you are instructing him not
 24 to answer a question of whether he was instructed not
 25 to analyze demonstration district E and you're

1 district E.

2 BY MS. THEODORE:

3 Q. That's correct, Dr. Trende, right?

4 A. That's correct. I have not.

5 MS. THEODORE: Okay.

6 MS. PROUTY: What is your second question?

7 MS. THEODORE: My second question is
 8 whether he was asked to analyze demonstration
 9 district E.

10 MS. PROUTY: Okay.

11 MS. THEODORE: My third question was
 12 whether he told counsel that to analyze demonstration
 13 district E he would need more time?

14 MS. PROUTY: Sure. Let me confer on my
 15 end as well to see if there's a way that he could
 16 answer those questions, but for now those are our
 17 objections and instructions.

18 MS. THEODORE: Can we come back in like 5
 19 minutes?

20 MS. PROUTY: Sure.

21 (Recess taken.)

22 MS. THEODORE: I have no more questions.
 23 Thank you, Dr. Trende.

24 MR. STRACH: We have no questions.

25 THE REPORTER: Read and sign?

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57 (Pages 225 to 228)

1 MR. STRACH: Yes.
 2 THE REPORTER: Are electronic transcripts
 3 good for everybody?
 4 MS. THEODORE: Yes.
 5 MR. STRACH: Works for us. I don't think
 6 we need anything expedited.
 7 MS. PROUTY: We'll follow up if we do.
 8 (The deposition concluded at 5:16 p.m.)
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1 STATE OF NORTH CAROLINA)
 2) SS:
 3 COUNTY OF GUILFORD)
 4 I, Vincent Bailey, Certified Shorthand
 5 Reporter, do hereby certify that SEAN TRENDE, PH.D. on
 6 September 30, 2024 was by me first duly sworn to
 7 testify to the truth, and that the above deposition
 8 was recorded stenographically by me and transcribed by
 9 me.
 10 I FURTHER CERTIFY that the foregoing
 11 transcript of said deposition is a true, correct, and
 12 complete transcript of the testimony given by the said
 13 witness at the time and place specified.
 14 I FURTHER CERTIFY that I am not a relative
 15 or employee or attorney or employee of such attorney
 16 or counsel, or financially interested directly or
 17 indirectly in this action.
 18 IN WITNESS WHEREOF, I have set my hand.
 19
 20
 21
 22
 23
 24
 25

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1 IN UNITED STATES DISTRICT COURT.
 2 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 3 EASTERN DIVISION
 4 Case No. 4:23-CV-00193-D
 5 RODNEY D. PIERCE and MOSES)
 6 MATTHEWS)
 7 Plaintiffs,)
 8 vs.)
 9)
 10 THE NORTH CAROLINA STATE)
 11 BOARD OF ELECTIONS, et al.,)
 12 Defendants.)
 13
 14 I, _____,
 15 do hereby certify that I have read the foregoing
 16 transcript of my deposition consisting of pages _____
 17 through _____, inclusive; and I find it is a true and
 18 correct transcript of my deposition so given as
 19 aforesaid.
 20 _____
 21
 22 Subscribed and sworn to
 23 before me this _____ day
 24 of _____, 2024.
 25

17 Notary Public
 18
 19
 20
 21
 22
 23
 24
 25

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58 (Pages 229 to 231)

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